a statement as to the income and expenses for such operations, and further ordering the plaintiff to make available for the examination of said Illinois Commerce Commission, its officers, agents and employees, all of plaintiff's accounts and records relating to transactions between plaintiff and [fol. 6] Chicago District Pipeline Company, including all accounts and records as to joint or general expenses, any portion of which may be applicable to said transactions. A true copy of said order is attached to this bill as Exhibit D.

8. Plaintiff is not a party to said citation or to said proceedings against the Chicago District Pipeline Company, and said order of March 3, 1937 was made and entered by Illinois Commerce Commission without notice to plaintiff and without giving the plaintiff an opportunity to be heard.

9. Chicago District Pipeline Company and the plaintiff are not subject to common control through common stock ownership, or in any other manner. At all times mentioned herein prior to September 1, 1931, all or substantially all of the outstanding common capital stock of Chicago District Pipeline Company was owned or held by Insull Son & Co., Inc., an Illinois Corporation, and, since September 1, 1931, by Natural Gas Investment Company, an Illinois Corporation. The outstanding stock of Natural Gas Pipeline Company at the times hereinafter mentioned was and is held by the following named corporations, substantially in the amounts indicated, viz.:

	Distribution on July 25, 1931	Distribution on December 31, 1935	Present distribution
Insull Son & Co., Inc. an Illinois corporation ...	26.63%	0.00%	0.00%
Cities Service Company a Delaware corporation ..	26.63%	26.63%	26.63%
Natural Gas Investment Company, an Illinois corporation	0.00%	26.63%	26.63%
The Texas Corporation, a Delaware corporation .	17.58%	17.58%	17.58%
Standard Oil Company a New Jersey Corporation	26.62%	13.31%	13.31%

	Distribution on July 25, 1931	Distribution on December 31, 1935	Present distribution
Southwestern Development Company, a Colorado corporation	0.00%	13.31%	13.31%
Columbian Carbon Company, a Delaware corporation	2.53%	2.53%	2.53%

On July 25, 1931 all or substantially all of the outstanding capital stock of Insull Son & Co., Inc., was owned or held by Insull Utility Investments, Inc., an Illinois corporation, which was not owned or controlled directly or indirectly by any one or more of the above listed corporations. Plaintiff is informed and believes that the outstanding capital stock of Natural Gas Investment Company is held by the following named corporations substantially in the amounts indicated:

[fol..7]

Peoples Gas Subsidiary Corporation, an Illinois corporation	79.54%
Commonwealth Subsidiary Corporation, an Illinois corporation	4.28%
Public Service Co. of Northern Illinois, an Illinois corporation	16.18%

And plaintiff is further informed and believes that all of the outstanding capital stock of Peoples Gas Subsidiary Corporation, an Illinois corporation, is owned by The Peoples Gas Light and Coke Company, an Illinois corporation; and that all of the outstanding capital stock of Commonwealth Subsidiary Corporation, an Illinois corporation, is owned by Commonwealth Edison Company, an Illinois corporation.

10. The affairs of the plaintiff and of Chicago District Pipeline Company are controlled by their respective Boards of Directors and officers acting pursuant to their charters and the laws of the states of their incorporation. At the time of the negotiation for and execution of said contract of July 25, 1931, the Board of Directors of the plaintiff corporation consisted of eight members, and said board has subsequently been enlarged to include nine members, but at all times mentioned herein Natural Gas Invest-

ment Company and Insull Son & Co., Inc., have been represented by not more than two members of said board and neither Natural Gas Investment Company, Insull Son & Co., Inc., nor any other of the corporations named above, have ever controlled or attempted to control said board, and at none of the times mentioned herein was there any common control of the Boards of Directors of the plaintiff and of Chicago District Pipeline Company. Since the date of plaintiff's incorporation, and until February 9, 1937 one of the two members of plaintiff's board of directors represent- [fol. 8] ing Natural Gas Investment Company or Insull Sons & Co., Inc., has been elected vice president of Natural Gas Pipeline Company of America, but said vice president never exercised any function of said office nor taken any part in the control or management of plaintiff's business or affairs as such officer, and has received no compensation as vice president and, since February 9, 1937, none of the directors representing Natural Gas Investment Company has been an officer of Natural Gas Pipeline Company of America.

11. Plaintiff alleges, and the attorneys, agents and representatives of the Illinois Commerce Commission so state, that said Illinois Commerce Commission proposes, threatens and intends to regulate, supervise and control the contracts, rates and other affairs of the plaintiff, and otherwise exercise jurisdiction and control over the plaintiff, and as preliminary thereto to inquire into the earnings, expenses and profits of the plaintiff, the value of its properties and investments, and the other business affairs of the plaintiff; that it is the avowed intention of said Illinois Commerce Commission to treat the Chicago District Pipeline Company and Natural Gas Pipeline Company of America as affiliated corporations with common stock ownership, and subject to common control, to regulate the business affairs of said corporations as a single enterprise under the jurisdiction of said Illinois Commerce Commission, to take jurisdiction of and regulate the profits and income of the plaintiff, and to exercise all power, control and dominion over the plaintiff, which purports to have been granted to said Illinois Commerce Commission by Section 8a of said Public Utilities Act referred to in said order.

12. Plaintiff avers that the Illinois Commerce Commission is not authorized nor empowered to inquire into, in-

vestigate or require the disclosure of the earnings, expenses or profits of the plaintiff, nor the value of its properties or investments, nor any other business or affairs of the plaintiff, and further alleges that said Illinois Commerce Commission is not authorized or empowered nor has it authority or jurisdiction to regulate, control, supervise or interfere with the contracts or other business affairs of the plaintiff, and avers that the Public Utilities Act, and particularly Section 8(a) thereof, has no application to the plaintiff company and that said Act is wholly null and void in so far as said act or said Section 8(a) thereof purport to confer upon the Commission any jurisdiction or authority over the plaintiff, its officers or agents, or the plaintiff's business, books, records, contracts or affairs.

[fol. 8½] Plaintiff further states that said Illinois Commerce Commission is not authorized or empowered nor has authority or jurisdiction under said Public Utilities Act, or otherwise, to require the plaintiff to file with said Illinois Commerce Commission a report as to the cost of the property of the plaintiff which is used in supplying natural gas to said Chicago District Pipeline Company, or a statement of the income or expenses of the plaintiff in connection with supplying gas to said Chicago District Pipeline Company, or to report to said Illinois Commerce Commission as to the cost of all or any part of its property or properties used by it in the business of transporting and selling natural gas, or to make or disclose any statement as to its income or expenses from such operations or to require the plaintiff to make available for examination by said Illinois Commerce Commission, or its officers, agents or employees, any of its accounts or records relating to transactions between said Natural Gas Pipeline Company of America and Chicago District Pipeline Company, either including or excluding accounts and records as to joint or general expense, any portion of which may be applicable to said transactions, as ordered and directed in said order of the Illinois Commerce Commission dated March 3, 1937, and plaintiff avers that said order is wholly null and void.

13. Plaintiff further alleges that said order of March 3, 1937, and Section 8(a) of said Public Utilities Act deprive the plaintiff of property without due process of law and deny to the plaintiff the equal protection of the laws, and subject plaintiff's books, records, papers and effects to un-

lawful searches and seizures, and that said order and said section of said Public Utilities Act are in violation of and prohibited by the Constitution of the United States of America and Section One of the Fourteenth Amendment thereto.

14. If the Illinois Commerce Commission is permitted to enforce said order of March 3, 1937, herein complained of, plaintiff will suffer great inconvenience and expense, plaintiff's trade secrets, secret processes and methods of doing business will be exposed to its competitors, plaintiff's credit will be impaired, and plaintiff will be hampered and hindered in its commerce and business affairs, and will suffer divers other great and irreparable harm and injury, all to its great injury and irreparable loss and damage; and plaintiff will be deprived of its property and civil rights without due [fol. 9] process of law, and denied the equal protection of the law, and its papers and effects will be subject to unreasonable search and seizure in violation of the Fourteenth Amendment to the Constitution of the United States of America and Section 6 of Article 2 of the Constitution of the State of Illinois, and plaintiff's interstate commerce will be burdened and obstructed and hampered in violation of the Constitution and the laws of the United States of America.

15. The penalties provided by said Public Utilities Act for violation of or non-obedience of the orders of the Illinois Commerce Commission are so large and so severe as to intimidate the plaintiff, its officers and agents, and to render it impracticable for the plaintiff to risk the imposition of said penalties or to resist said unlawful order except in this Honorable Court. Unless the Illinois Commerce Commission and the said Otto Kerner are restrained and enjoined as herein prayed, they will proceed with the proposed and threatened inquiry and investigation of the plaintiff's affairs as set out above, and will compel the plaintiff, its officers, agents and employees to comply with said order of the said Illinois Commerce Commission herein complained of, and enforce the penalties prescribed by the laws of the State of Illinois for violation of or non-obedience to said order, and plaintiff, its officers, agents and employees will be coerced by the threat of said penalties into compliance with said order, to the great inconvenience, expense and irreparable loss and damage of the plaintiff.

16. The plaintiff has no adequate and complete remedy at law, and only in a suit in equity and by the final decree and order of injunction of this court can the plaintiff be protected in its property and constitutional rights, and the plaintiff states its willingness and intention and hereby offers to do equity in the premises.

[fol. 10] Wherefore, Plaintiff prays:

(a) That the order of said Commission, dated March 3, 1937, and herein described and complained of, be decreed to be in violation of the Constitutions and laws of the United States of America and of the State of Illinois and beyond the scope of the powers of the Illinois Commerce Commission, and to be totally void;

(b) That a three judge court be constituted as provided in Section 266 of the Judicial Code, and that the defendants and each of them and all other persons be temporarily and permanently restrained and enjoined from enforcing said order.

(c) That the defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined by said court from taking any steps or proceedings against the plaintiff, its directors, officers, agents or employees, to enforce any penalties, or any other remedy for disregarding said order described above;

(d) That the Illinois Commerce Commission and the said Otto Kerner and each of them be temporarily and permanently restrained and enjoined by this court from taking any action directly or indirectly to enforce said order of March 3, 1937 in any manner or degree, and that said defendants be temporarily and permanently enjoined and restrained from exercising or attempting to exercise any jurisdiction or control over this plaintiff, its officers, directors, agents or employees;

(e) That the plaintiff have such other and further relief as may be just and equitable in the premises.

May it Please Your Honors to grant unto the plaintiff a writ of subpoena of the United States of America, issuing out of and under the seal of this Honorable Court, directed to said defendants, James M. Slattery, Andrew Olson, Charles E. Byrne, James E. Marnane and Harry A. Barr, the persons presently constituting the Illinois Commerce Commission of the State of Illinois, and Otto Kerner, Attorney General of the State of Illinois, commanding them and each of them on a day certain to be named therein, and under a certain penalty, to be and to appear before this Honorable Court, then and there to answer, but not under oath, answer under oath being expressly waived, all and singular of the premises, and to perform and to abide by such order, direction or decree as may be made against them in the premises, and that, pending the hearing and determination of the application for a permanent injunction herein, a temporary restraining order may be issued as above prayed.

[fol. 11] And the plaintiff will ever pray.

Natural Gas Pipeline Company of America, by Floyd C. Brown, Its Vice-President and General Manager. Sidley, McPherson, Austin & Burgess, Attorneys for said Natural Gas Pipeline Company of America. J. J. Hedrick, Donald F. McPherson, Howard Neitzert, of Counsel for the Plaintiff.

Duly sworn to by Floyd C. Brown. Jurat omitted in printing.

[fol. 12] EXHIBIT "A" TO COMPLAINT

Contract Between Continental Construction Corporation and Chicago District Pipeline Company

Dated July 25, 1931

[fol. 12-1] This Agreement, made and entered into this 25th day of July, 1931, by and between Continental Construction Corporation, a Delaware corporation, hereinafter referred to as "Seller," and Chicago District Pipeline Company, an Illinois corporation, hereinafter referred to as "Buyer,"

Witnesseth:

Whereas, Seller is now constructing a twenty-four inch (24") pipe line from a point in Beaver County, Oklahoma, to a point near the City of Joliet, Illinois, hereinafter specified, through which Seller proposes to transport natural gas; and

Whereas, Seller is willing to sell and deliver to Buyer at the said point near the City of Joliet, Illinois, and at other points hereinafter referred to, and Buyer is willing to purchase from Seller and receive at said points, a supply of natural gas in the quantities and upon the terms and conditions hereinafter stated;

Now, Therefore, in consideration of the premises and their mutual covenants hereinafter set forth, the parties agree as follows:

Article I

Seller agrees:

Section 1. That it will proceed diligently with the construction of the twenty-four inch (24″) pipe line hereinbefore referred to, extending from a point in Beaver County, Oklahoma, to a point in the southwest quarter of the southwest quarter of the southwest quarter of Section 18, Township 35 North, Range 10 East of the 3rd Principal Meridian, in Will County, in the State of Illinois, which point is near the City of Joliet, Illinois, and that said pipe line will be equipped with such compressor stations and [fol. 12-2] other auxiliary apparatus as will render it capable of delivering at the point or points of delivery hereinafter referred to natural gas in such quantities as Seller is obligated to deliver to Buyer hereunder.

Section 2. (a) That it will procure and enter into a contract with Texoma Natural Gas Company, a Delaware corporation, hereinafter referred to as "Texoma", wherein Texoma shall, subject to the contingencies set out in Section 11 of Article III hereof, agree:

(1) To maintain and develop such of the natural gas rights from time to time owned by it in Moore, Carson, Potter, Hutchinson and Gray Counties in the State of Texas as shall be necessary to enable it to produce natural gas in quantities which, with such additional quantities as may be purchased by Texoma, shall be sufficient to enable it to meet the obligation expressed in clause (3) of this sub-section (a) of this Section.

(2) To construct from a junction with the above mentioned pipe line in Beaver County, Oklahoma, to a point near Fritch, Texas, a twenty-four inch (24″) pipe line and to construct and connect therewith gathering lines and other

equipment adequate to procure and deliver to Seller natural gas produced in Moore, Carson, Potter, Hutchinson and Gray Counties in the State of Texas;

(3) To sell and deliver to Seller at said junction point a supply of natural gas sufficient to meet all of Seller's requirements, so long as such supply is available from the properties, wells and gas purchase contracts of Texoma;

(b) That all obligations of Buyer under this contract are subject to the express condition that Seller shall enter into a contract with Texoma in accordance with the provisions of sub-section (a) of this Section.

[fol. 12-3] (c) That such contract between Seller and Texoma may be modified in any respect so long as Seller is not thereby rendered unable to perform its obligations hereunder.

Section 3. That it will sell and deliver to Buyer, at the prices and upon the other terms and conditions hereinafter specified, natural gas in such quantities as Buyer shall from time to time desire to purchase up to, but not exceeding, one hundred thirty million (130,000,000) cubic feet per day or such larger quantity in any day as Seller shall actually have delivered on any prior day and with respect to which Buyer shall accordingly have become obligated hereunder to pay a capacity charge; except that Seller shall not at any time be obligated to deliver during any hour more than one twenty-fourth (1/24) of the maximum quantity which it is at that time obligated to deliver hereunder in any day.

Section 4. That should Buyer on or before March 1st in any year up to and including 1936 request the right to take from Seller a quantity of gas per day larger than the quantity which Seller shall at the time of such request be obligated to deliver under Section 3 of this Article, and not exceeding a total of three hundred million (300,000,000) cubic feet, Seller shall on October 31st of such year or any day thereafter deliver to Buyer when requested by it all or any part of such specified quantity, except that if the quantity so specified exceeds by more than fifty million (50,000,000) cubic feet the quantity which Seller shall at the time of such request be obligated to deliver under Section 3 of this Article, Seller shall be obligated to deliver that part of such specified quantity which exceeds the quantity which Seller shall at the time of such request be obligated to deliver under Section 3 of this Article only on and after October 31st of the year following that in which the request is made.

[fol. 12-4] Section 5. That the gas to be delivered by Seller hereunder shall be natural gas as produced in its natural state from wells in Hartley, Moore, Carson, Potter, Hutchinson, Gray and Wheeler counties in the State of Texas, or other natural gas fields the gas from which shall have constituents and burning characteristics substantially like those of the natural gas then being produced in the above mentioned area, except (a) that said natural gas shall at all times comply with the requirements as to purity hereinafter expressed, (b) that Seller may extract or permit the extraction of moisture, helium, natural gas gasoline, butane and/or propane from said natural gas before delivery thereof to Buyer, (c) that Seller may subject or permit the subjection of the gas to compression, cooling, cleaning and other processes to such an extent as may be required in its transportation from the wells to the point or points of delivery, and (d) that the weighted average total heating value of the gas delivered in any day shall not in any event be less than nine hundred fifty (950) British thermal units per cubic foot.

Section 6. That it will deliver such gas to Buyer at the principal point of delivery hereinafter specified at substantially such pressures as Buyer shall from time to time specify up to, but not exceeding, three hundred (300) pounds per square inch gauge; that it will deliver gas to Buyer at other points of delivery hereinafter specified at substantially such pressure as Buyer shall specify not oftener than daily, up to but not exceeding, three hundred (300) pounds per square inch gauge; and that it will begin such delivery as soon as practicable after the said pipe line now being constructed by it is completed and ready for commercial operation.

Section 7. That the gas delivered hereunder

(a) shall be commercially free from solid and/or liquid matter;

[fol. 12-5] (b) shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet; provided that this purity requirement shall be considered as satisfied if a strip of white filter paper, recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, be exposed to the gas for one and one-half (1½) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas not impinging from a jet upon the test paper, and after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with the solution and not exposed to the gas;

(c) shall not contain more than thirty (30) grains of total sulphur per hundred (100) cubic feet;

(d) shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the natural temperature of the gas in the main pipe line at a point approximately fifty (50) feet in advance of Seller's meter inlet header and at the pressure at such point, and that the water shall not be present in liquid phase;

provided, that if Buyer or any purchaser from Buyer shall at any time be required by a duly constituted public regulatory authority to deliver to its customers gas containing less hydrogen sulphide and/or less total sulphur than above specified, Seller shall upon reasonable notice from Buyer cause the gas delivered hereunder to conform to such new requirement and the additional expense incurred by Seller in so doing, so far as such expense relates to the gas delivered hereunder, shall be borne one-half (½) by Seller, and one-half (½) by Buyer.

Section 8. That if the gas offered for delivery by Seller hereunder shall fail at any time to conform to any of the specifications hereinabove in clauses (a), (b) and (c) of Section 7 of this Article set forth, then Buyer may [fol. 12-6] at its option accept delivery of such gas and itself remove therefrom any solid matter, liquid matter, hydrogen sulphide and/or sulphur in any other form in excess of the amounts so specified in said Section 7, and Seller shall reimburse Buyer for any reasonable expense incurred by Buyer in effecting such removal, or for any reasonable expense otherwise incurred by Buyer by reason of the failure of the gas to conform to said specifications.

Section 9. That it will not at any time during the term hereof purchase or negotiate for the purchase of gas manufactured in any community or the environs thereof, or sell or negotiate for the sale of any gas to supply any person, firm or corporation located in any community or the environs thereof, in which community or environs gas is supplied to the general public by any of the public utility companies named in Section 2 of Article II hereof, or by any public utility company controlled by Middle West Utilities Company or Midland United Company, Delaware corporations, whose gas supply is procured directly or indirectly in whole or in part from Seller.

Section 10. That it will exercise reasonable care and diligence in the operation of its said pipe line and the equipment auxiliary thereto and will maintain and utilize the same in accordance with the best practice to avoid any interruption in or curtailment of the supply of gas to be delivered by it to Buyer; and that, if a temporary interruption in or curtailment of such supply shall become necessary in the operation of the pipe line, it will at once notify Buyer by telephone, telegraph or other prompt means of the nature, extent and probable duration of such temporary interruption or curtailment, and will promptly thereafter give Buyer like notice in writing by registered mail.

[fol. 12-7] Section 11. That it will and hereby does warrant generally the title to all gas delivered hereunder, and that it will indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, which are applicable before the title to the gas passes to Buyer.

Section 12. That Buyer shall have the right to sell the gas purchased by it hereunder to any public utility company and to purchasers for industrial purposes; that, in the event that any public utility company in the State of Illinois which may at any time be purchasing gas from Seller and which is not now controlled by any of the companies referred to in Section 9 of this Article shall come to be so controlled, or shall sell its property to any such company, Buyer may, at its option, undertake to supply such public utility company, or the community or communities in which it theretofore operated, with gas purchased hereunder for the remaining term of such company's contract with Seller, in which event the said contract shall be cancelled, provided Buyer shall reimburse Seller for the actual cost less depreciation of any lateral line and/or equipment auxiliary thereto installed or purchased by Seller to serve such public utility company.

Section 13. That if natural gas shall hereafter be discovered in commercial quantities in a field or fields generally adjacent to the territory supplied by Buyer, and/or the purchasers of gas from Buyer, with gas purchased hereunder, unless Seller shall (a) either take such steps as may be necessary to acquire such supply of natural gas and deliver the same to Buyer hereunder; provided, that if the quality of such supply of natural gas is different from that specified in this contract, Buyer shall have agreed in writing to take and pay for the same; or (b) shall co-oper- [fol. 12-8] ate with Buyer in acquiring such supply for Buyer's use or for other disposition agreeable to Buyer; then Buyer may at its election purchase all or any part of such supply of natural gas and to the extent of the quantity so purchased shall, despite any provision of this contract to the contrary, be relieved from its obligations to Seller hereunder as then existing, except its obligation to pay a capacity charge on and after January 1, 1935, based upon a quantity of gas not less than one hundred thirty million (130,000,000) cubic feet of gas in a day.

Article II

Buyer agrees:

Section 1. That it will, during the period up to and including October 31st, 1936, purchase from Seller all of its natural gas requirements and/or all the natural gas requirements for any purpose of the companies named in Section 2 of this Article, (except the natural gas requirements of Western United Gas and Electric Company for its properties in the State of Illinois located south of an east and west line through Peoria, Illinois); up to and including a maximum amount of two hundred twenty-five million (225,000,000) cubic feet per day; that it will pay to Seller therefor at the price hereinafter in Section 1 of Article III hereof set forth; that on and after January 1st, 1935, it will pay to Seller, as a minimum, a capacity charge (as more particularly defined in Section 1 of Article III hereof) based on a delivery hereunder of one hundred thirty million (130,000,000) cubic feet of gas in a day; that if pursuant to a request made by Buyer on or prior to March 1st in any year up to and including 1936 as provided in Section 4 of Article I hereof Seller shall make available or furnish [fol. 12-9] such pipeline capacity as will enable it to deliver the quantity of gas per day so requested by Buyer, Buyer will pay a capacity charge thereon commencing with and after the date on which Seller shall become obligated under the terms of Section 4 of Article I hereof to stand ready to deliver such requested quantity, or commencing with and after any later date, not more than fifteen (15) days thereafter, on which Seller shall first actually so stand ready, provided that if Seller shall fail so to stand ready to deliver such requested quantity of gas per day on the date specified therefor in Section 4 of Article I hereof, or within fifteen (15) days thereafter, but shall so stand ready within one (1) year from the date so specified, Buyer's obligation to pay a capacity charge on such requested quantity per day, so far as the same represents an increase over the capacity charge otherwise payable by Buyer, shall arise one (1) year from the date so specified.

Section 2. That it will procure and enter into contracts with The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois and Western United Gas and Electric Company, Illinois corporations, for the sale and delivery to them of natural gas purchased by it hereunder, on such terms as will assure to it during the term hereof the revenue necessary to enable it to make when due the payments due from it to Seller hereunder; that Buyer's contract with each such company shall obligate such company to purchase from Buyer, or from one of the other purchasers from Buyer of gas received hereunder, all natural gas required by it for any purpose on any day on or prior to October 31, 1936, up to and including such quantity as, together with other natural gas purchased by Buyer from Seller on such day, will equal at least two hundred twenty-five million (225,000,000) cubic feet; except that there shall be excluded from the contract with Western [fol. 12-10] United Gas and Electric Company the natural gas requirements of its properties in the State of Illinois located south of an east and west line through Peoria, Illinois; that it will provide the necessary mains and other facilities for the delivery to such companies of the gas purchased by it hereunder; that the contract of Buyer with each such company shall provide for payment by such company to Buyer for gas on such a basis that if at any time the earnings of Buyer thereunder and under like contracts entered into by Buyer for sale of gas purchased hereunder to other purchasers shall exceed a reasonable return upon the property used or held by Buyer in the carrying out of such contracts, the amount or amounts paid to Buyer by such purchasers for gas thereunder shall be so reduced that the earnings of Buyer thereunder shall not exceed such reasonable return; that Buyer's contract with each such company and with any other company to whom Buyer may for the purpose of resale at any time sell any part of the gas purchased hereunder shall contain a provision whereby such company shall guarantee to Seller the performance by Buyer of the terms, conditions and provisions of this contract to the following extent: each such company shall be obligated to Seller on its said guaranty for any month for that proportion of Buyer's obligations to Seller hereunder which such company's firm money obligation to Buyer for the purchase of gas under its said contract with Buyer in such month bears to the aggregate firm money obligations to Buyer of all of such companies for the purchase of gas in such month under their said contracts with Buyer; that if Buyer shall be in default for a period of thirty (30) days in the payment of any sum due from it to Seller hereunder, and shall continue to be in default for a further period of thirty (30) days after demand in writing by Seller for payment, each of said companies shall become obligated under [fol. 12-11] its said guaranty to pay directly to Seller its proportion, determined as above provided, of the amount or amounts then and from time to time thereafter due from Buyer to Seller hereunder; that each of said companies shall in its said contract with Buyer expressly consent to the provisions of this Section of this contract; and that the obligations of Seller hereunder shall be conditional upon the procuring by Buyer of such contracts with the three companies hereinabove named in this Section and the providing of transmission facilities as aforesaid; provided, that any of such contracts may be modified at any time by agreement between Buyer and any such company in any respect except as to the said guaranty so long as Buyer is not thereby rendered unable to perform its obligations hereunder.

Article III

The parties hereto mutually covenant and agree as follows:

Section 1. The price to be paid by Buyer to Seller for gas purchased by Buyer hereunder in any month shall consist of the sum of a capacity charge, which shall be based upon Buyer's "maximum demand", as hereinafter defined, and a commodity charge. The quantities of gas which shall form the bases for such charges shall be those determined in accordance with Sections 2, 3 and 4 of this Article.

(a) For the purpose of determining Buyer's maximum demand, as applicable to any day during the period beginning with the date of first delivery of gas hereunder and ending February 29, 1932, there shall for each day of such period be deducted from the quantity of natural gas taken by Buyer in such day the quantity of natural gas, and/or the calculated equivalent, in natural gas of one thousand ten (1010) British thermal units per cubic foot, of any coke oven gas, which Buyer and/or purchasers of gas from [fol. 12-12] Buyer shall on that day (1) have used as boiler fuel in the operation of its or their steam plants or the steam plants of its or their subsidiaries, (2) have used in the underfiring of coke ovens operated by it or them, and/or (3) have sold for use as boiler fuel in the steam plants of central electric generating stations. The maximum quantity of any coke oven gas which shall be included in determining the amount of such deduction for any day up to and including December 31, 1931, shall be such a quantity thereof as is equivalent to twenty million (20,000,000) cubic feet in any day of natural gas of one thousand ten (1010) British thermal units per cubic foot, and from January 1, 1932, to and including February 29, 1932, shall be such a quantity as is equivalent to ten million (10,000,000) cubic feet in any day of such natural gas. As applicable to any given day of said period Buyer's maximum demand shall be defined as the largest daily quantity of gas so arrived at for that or any prior day of said period. The capacity charge payable by Buyer for any month of said period shall be based upon the average of the maximum demands applicable to each of the several days of such month.

The commodity charge payable by Buyer for any month of said period shall be computed daily as follows: for all gas taken in any day up to but not exceeding the maximum demand applicable to such day the commodity charge shall be six cents ($.06) per thousand (1,000) cubic feet; and for all gas taken in any day in excess of the maximum demand applicable to such day the commodity charge shall be nine and seven tenths cents ($.097) per thousand (1,000) cubic feet.

(b) During the period from March 1, 1932 to October 31, 1932, inclusive, the capacity charge for any month shall be based upon Buyer's maximum demand applicable to February 29, 1932.

[fol. 12-13] The commodity charge payable by Buyer for any month of said period shall be computed daily as follows: for all gas taken in any day up to but not exceeding the maximum demand applicable to such day the commodity charge shall be six cents ($.06) per thousand (1,000) cubic feet; and for all gas taken in any day in excess of the maximum demand applicable to such day the commodity charge shall be nine and seven tenths cents ($.097) per thousand (1,000) cubic feet.

(c) During the period from and after November 1, 1932, Buyer's maximum demand as applicable to any day of such period shall be the largest daily quantity of gas taken by it from Seller on that or any prior day of said period and in any event not less than the maximum demand applicable to February 29, 1932. The capacity charge payable by Buyer for any month of said period shall be based upon the average of the maximum demands applicable to each of the several days of such month, but in no event shall the capacity charge payable on and after January 1, 1935, be based on a quantity of gas less than one hundred thirty million (130,000,000) cubic feet, as hereinbefore provided in Section 1 of Article II hereof.

The commodity charge payable by Buyer for any month of said period shall be six cents ($.06) per thousand (1,000) cubic feet of gas taken by Buyer hereunder in such month.

(d) The amount of the capacity charge hereinbefore in sub-section (a), (b) and (c) of this Section referred to shall, for any month, be determined by applying to the quantity of gas hereinbefore defined as the basis for the capacity charge for such month a rate of five dollars and fifty-three and fifty-eight hundredths cents (\$5.5358) per thousand (1,000) cubic feet.

(e) Buyer shall give Seller reasonable notice in each in- [fol. 12-14] stance of its intention to deliver gas for the purposes specified in clauses (1), (2) and (3) in the first paragraph of sub-section (a) of this Section and Seller shall in each instance have the right to inspect, check and approve the meters and the measurement of gas to such customers and to examine and check the charts and other records pertaining to the measurement and determination of the average total heating value of such gas and at its option to have representatives present at all calibrations, adjustments and corrections of such metering or other equipment. Buyer shall furnish to Seller daily a statement showing the quantity and weighted average total heating value of such gas, if any, as may be used for the purposes specified in said clauses (1), (2) and (3) in the first paragraph of sub-section (a) of this Section.

(f) In the event of the failure or inability of Seller to deliver during any one or more days the amount of gas which Buyer desires to take, up to but not exceeding the maximum demand applicable to such day or days, then the quantity of gas representing the basis for the capacity charge for the month in which such day or days occur shall be reduced by a quantity equal to the quotient arrived at by dividing by the number of days in such month the aggregate of the differences between the quantities of gas delivered on such day or days and the quantities forming the bases for the capacity charges applicable to such day or days.

If during the period up to January 1, 1935, a reduction of the capacity charge in any month under the provisions of this sub-section (f) of this Section results from a failure or inability of Seller to deliver, for fifteen (15) or more consecutive days commencing between October 16th and the following February 13th, inclusive, or for sixty (60) or more consecutive days commencing between February 14th and the following October 15th, inclusive, such reduced ca- [fol. 12-15] pacity charge shall be the monthly capacity charge thereafter until a larger capacity charge is established by application of the provisions of sub-section (c) of this Section, or until Buyer is required by the terms of Section 1 of Article II hereof to pay a capacity charge based upon the delivery of one hundred thirty million (130,000,000) cubic feet per day. If on and after January 1, 1935, Seller shall fail or be unable for fifteen (15) or more consecutive days commencing between October 16th and the following February 13th, inclusive, or for sixty (60) or more consecutive days commencing between February 14th and the following October 15th, inclusive, to deliver the quantity of gas which Buyer desires to take, up to but not exceeding the maximum demands applicable to such days, (or up to one hundred thirty million (130,000,000) cubic feet if the maximum demand applicable to any of such days is less) the capacity charge then otherwise payable by Buyer shall be reduced to the extent of such failure or inability, as averaged over said days, but if by such reduction the basis for the capacity charge shall have been reduced to a quantity of gas less than one hundred thirty million (130,000,000) cubic feet, then upon Seller's again becoming able to make deliveries in the quantities desired by Buyer, Buyer shall resume the payment of a capacity charge based on a delivery of one hundred thirty million (130,000,000) cubic feet, or such larger quantity if any as shall thereafter be established as the basis of the capacity charge by application of the provisions of sub-section (c) of this Section.

(g) In the event of any failure or inability of Seller to deliver hereunder such quantity of gas as Buyer shall have a right to take, as a result of which failure or inability the stock of gas in the gas holders operated by the purchasers from Buyer of gas delivered hereunder shall be substantially [fol. 12-16] reduced, then Buyer shall have the right to take as soon as is convenient to Seller such quantities of natural gas as will replenish such holder stocks without by so doing increasing its maximum demand as theretofore established.

Section 2. The prices to be paid by Buyer for gas delivered hereunder as set forth in Section 1 of this Article are based upon the delivery of gas having an assumed but not guaranteed average total heating value at the point or points of delivery of one thousand ten (1010) British thermal units per cubic foot, and Seller shall use all reasonable efforts to conduct its operations in such a manner as will result in delivery of gas conforming to such standard.

Should the average total heating value of the gas delivered in any day be more than one thousand twenty (1,020) or less than one thousand (1,000) British thermal units per cubic foot, then for the purpose of, and before, determining Buyer's maximum demand, the quantity of such gas shall be increased or decreased, respectively, in the percentage by which the average total heating value of such gas is greater than one thousand twenty (1,020) or less than one thousand (1,000) British thermal units per cubic foot. Should the average total heating value of the gas delivered in any month be more than one thousand thirty-five (1,035) or less than nine hundred eighty-five (985) British thermal units per cubic foot, then for the purpose of, and before, applying the commodity charge, the quantity of such gas shall be increased or decreased, respectively, in the percentage by which the average total heating value of such gas is greater than one thousand thirty-five (1,035) or less than nine hundred eighty-five (985) British thermal units per cubic foot.

Section 3. (a) Seller shall furnish, install, operate and maintain in satisfactory working order and condition at its [fol. 12-17] own expense at each point of delivery of gas hereunder a measuring and regulating station, properly equipped with orifice meters and recording gauges or such other meter or meters as shall be mutually agreed upon by the parties hereto. The said meters at the principal point of delivery shall be read hourly and the readings and registrations of same shall serve as the basis for the hourly determination of the quantity of gas delivered at such point by Seller to Buyer. At all other points of delivery the meters shall be read daily.

(b) The measuring and regulating equipment, buildings and other facilities furnished and installed by Seller at the points of delivery of gas shall be and remain its property. Buyer shall have access to said measuring and regulating equipment at all reasonable hours, but the reading, calibrating, and adjusting thereof and the changing of charts shall be done only by employees or agents of Seller. Buyer shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Seller's meters and Seller shall advise Buyer of any such intended operations sufficiently in advance in order that Buyer may conveniently have its representative present.

Charts and records from Seller's measuring equipment shall remain the property of Seller. Upon request of Buyer, after Seller has completed its use thereof for billing purposes, it will submit to Buyer records and charts from its measuring equipment, together with calculations therefrom, for inspection and verification by Buyer subject to return by Buyer within ten (10) days after receipt thereof.

(c) Buyer may at its option and at its own expense install, operate and maintain check measuring equipment in housing similar to that provided by Seller for the housing of its own [fol. 12-18] measuring equipment, which equipment and housing if installed by Buyer shall be and remain its property. Such check meters shall be so installed as not to interfere with the operation of meters of Seller. In the event check measuring equipment is installed by Buyer, Seller shall have access to the same at all reasonable hours but the reading, calibrating and adjustment thereof, and the changing of charts shall be done only by employees or agents of Buyer. Seller shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Buyer's meters and Buyer shall advise Seller of any such intended operations sufficiently in advance in order that Seller may conveniently have its representative present. Charts and records from said check measuring equipment, together with calculations therefrom, shall be available to Seller for inspection and verification subject to return within ten (10) days after receipt thereof.

(d) The total capacity of the gas measuring stations installed by Seller shall be sufficient to permit the testing and withdrawal of any individual meter from service without restricting the delivery of gas or interrupting the measurement of gas. The installation, maintenance, and operation of the regulating equipment shall be such as not to affect the accuracy of the gas volume determination made from either Seller's or Buyer's meters. The meter or meters of both Seller and Buyer shall be so located or protected as to assure freedom from pulsations, vibrations or surges at the meter or meters from any cause in so far as such protection is obtainable within practical limits mutually agreed upon to embody the best knowledge and information available.

(e) Either party hereto shall have the right to examine and [fol. 12-19] approve, or object to, the plans of the other for the installation by it of said measuring equipment, and none of said installations shall be placed in service for the regulation or measurement of gas hereunder unless and until both parties are satisfied, or it shall be determined by arbitration hereunder, that such installation has been made in such manner as to permit of accurate determination of the quantity of gas to be delivered hereunder and to permit ready verification of the accuracy of measurement.

(f) If for any reason meters are out of service and/or out of repair so that the amount of natural gas delivered cannot be ascertained or computed from the reading thereof, the natural gas delivered through the period such meters are out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(1) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

(2) By using the registration of any check meter or meters if installed and accurately registering.

(3) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

(g) From time to time, and at least once each month, on a date as near the first of the month as practicable, the accuracy of Seller's measuring equipment shall be verified, at Seller's expense, in the presence of representatives of both Seller and Buyer and the parties shall jointly observe any adjustments which are made in such measuring equipment. If either party at any time shall notify the other [fol. 12-20] that it desires a special test of any meter, the parties shall co-operate to secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other notice of the time of all tests of meters sufficiently in advance of the holding of the tests in order that the other party may conveniently have its representative present.

(h) If upon any test any meter is found to be not more than two per cent (2%) fast or slow previous readings of such meter shall be considered correct in computing the volume of gas delivered by Seller to Buyer, but the meter shall at once be properly adjusted to record accurately. If upon any test, any meter shall be found to be inaccurate by an amount exceeding two per cent (2%) then any previous readings of such meter shall be corrected for any period which is definitely known and/or agreed upon, except that no such correction shall extend back over a period beginning more than one month prior to the time when such inaccuracy was first made known by either party to the other. In case the period of inaccuracy is not definitely known and/or agreed upon then the correction shall be for a period extending over one half of the time elapsed since the date of last calibration of the meter or meters, not exceeding a period of fifteen (15) days.

(i) The specific gravity of the gas delivered hereunder shall be determined by test by Seller at least once each day. Seller shall advise Buyer of the time at which specific gravity tests are to be made in order that Buyer may conveniently have its representative present. The Edward's type specific gravity balance or other equipment acceptable to both parties shall be used.

(j) So long as the gas delivered to Buyer hereunder at [fol. 12-21] the several points of delivery hereinafter referred to shall be acquired by Seller from a common source or sources the purity, as specified in Section 7 of Article I hereof, specific gravity and average total heating value of all of the gas delivered hereunder by Seller shall be considered to be those determined at the principal point of delivery.

Section 4. (a) The unit of measurement for the gas delivered under this agreement shall be one (1) cubic foot of gas of the quality and purity hereinbefore in Section 7 of Article I hereof set forth at a temperature of sixty degrees Fahrenheit (60° F) and an absolute pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch. The readings and registrations of the measuring equipment herein provided for shall be computed into such units of volume and determinations of average total heating value and of purity shall be in terms of such units of volume. The true physical characteristics of the gas which affect such computations, including deviations from Boyle's Law, shall be given each its due consideration, and the determination of such physical characteristics shall be made in such manner, and with such apparatus, as is satisfactory to both parties, which shall be preferably in a manner and with apparatus approved by the United States Bureau of Standards.

(b) All fundamental constants, observations, records and procedures involved in determining and/or verifying the quantity and other characteristics of gas delivered hereunder shall, except as elsewhere specified herein, be in accordance with such standards therefor as are or may hereafter from time to time be approved and recommended by the American Gas Association, and in the absence of such standards, then such standards as are acceptable to the parties hereto.

Section 5. The total heating value of the gas delivered [fol. 12-22] hereunder shall be considered to be that determined at the principal point of delivery. Such determination shall be made hourly, and as nearly at the beginning of each hour as is practicable, by means of a Thomas recording calorimeter. The accuracy of the Thomas recording calorimeter shall be checked daily by means of a Junkers type of flow calorimeter operated according to the method of the United States Bureau of Standards. The Thomas and Junkers type calorimeters shall be installed, maintained and operated by and at the expense of Seller. If at any time the Thomas recording calorimeter is out of service or not operating properly for any reason, hourly determinations of total heating value shall be made with the Junkers calorimeter and these hourly determinations shall be used in computing averages. The Thomas recording calorimeter shall be deemed operating properly when its recorded total heating value does not vary from the total heating value as determined by the Junkers type of calorimeter by more than five (5) British thermal units per cubic foot of gas as herein defined. Buyer shall have the right to examine Seller's calorimeter equipment and test records at any reasonable hour and to be present at all tests and adjustments of such calorimeter equipment. The daily average total heating value of the gas delivered hereunder shall be calculated by weighting the several total heating values determined hourly as hereinabove provided in accordance with the respective quantities of gas to which such hourly total heating values are applicable and the monthly average total heating value shall be calculated by weighting the several daily average total heating values during such month in accordance with the respective quantities of gas to which such daily average total heating values are applicable. Buyer may at its option and at its own expense install similar Thomas recording calorimeter equipment and [fol. 12-23] Junkers type of calorimeter for check purposes.

Section 6. Each party hereto shall preserve for a period of at least three (3) years all test data, charts and other records resulting from performance by it of the terms of this contract.

Section 7. As soon as practicable after the end of each month, Seller shall render to Buyer a bill for the gas delivered during such month, which shall include a statement of the amount of gas delivered in such month. Buyer shall pay such bill within fifteen (15) days after the receipt thereof. Any payment by Buyer shall not prejudice its right to adjustment of any bill to which it has taken or may within six (6) months after receipt thereof take exception. Any amount not paid when due shall bear interest at the rate of six per cent (6%) per annum from the due date thereof until paid. Upon failure by Buyer for a period of sixty (60) days to pay any amount due from it Seller may in addition to any other remedy it may have hereunder, or otherwise, suspend further delivery of gas until such amount is paid, and should such failure to pay continue for six (6) months, Seller shall have the right to terminate this contract and all of its obligations hereunder.

Section 8. Delivery of gas hereunder shall be made at the main line valve on the down-stream side of the outlet header at the "Joliet Regulating and Measuring Station" of Seller, located upon a site near the City of Joliet, Illinois, hereinbefore described, and at such other like meter station valves as may be installed at any other point or points along Seller's main pipe line at which Buyer may desire to take delivery of any portion or portions of the gas purchased hereunder. The point of delivery first above described is [fol. 12-24] sometimes referred to herein as the "principal point of delivery". Points of delivery other than the principal point of delivery may be selected as to general location by Buyer but the exact location thereof shall be mutually agreed upon by the parties with due regard to topographical features and availability of sites for regulating and measuring stations. Seller's main pipe line within the meaning of this Section shall include the twenty-four inch (24″) pipe line hereinbefore referred to in Section 1 of Article I hereof and any branch line owned and controlled by it and in use for the purpose of supplying gas to purchasers of gas in northern Illinois and/or Wisconsin. Seller hereby grants to Buyer such an easement on, across, over and/or under such of Seller's property at its said Joliet Regulating and Measuring Station as may be necessary to permit Buyer to install, operate and maintain its own measuring and testing equipment with necessary piping and housing therefor and any necessary connections for transporting the gas purchased by it away from the said point of delivery.

Section 9. Title to the gas shall pass to Buyer at the point or points of delivery, hereinbefore specified, and thereafter sole responsibility and liability in relation thereto shall rest upon Buyer. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property and/or equipment of the indemnifying party, the points of delivery of the gas as hereinbefore specified to be the points of division of responsibility between the parties.

Section 10. The term "day" wherever used in this contract shall mean a period of twenty-four (24) consecutive hours beginning and ending at twelve o'clock noon standard time at the principal point of delivery. The term "month" [fol. 12-25] wherever used in this contract shall mean the period beginning at twelve o'clock noon standard time at the principal point of delivery on the first day of a calendar month and ending at twelve o'clock noon standard time at the said point of delivery on the first day of the next succeeding calendar month.

Section 11. Neither party shall be liable in damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, washouts, fire, the elements, arrests and restraint of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs and/or alteration in machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of natural gas supply, the binding order of any court or government authority which has been resisted in good faith by all legal means and any other cause whether of the kind herein enumerated, or otherwise, not within the control of the party and which by the exercise of due diligence such party is unable to overcome; but such causes or contingencies affecting the performance of this contract by either party shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this contract by Buyer relieve it from its obligation to pay capacity charges in accordance with the provisions hereof or other amounts due from it hereunder.

Section 12. Seller shall in any event only be bound to [fol. 12-26] furnish natural gas to the full extent that it is able so to do through the exercise of reasonable care and diligence in procuring natural gas from the properties, wells and gas purchase contracts of Texoma and in the transportation thereof through its pipe line for such period of time as natural gas is reasonably available. In the event of a temporary deficiency in the supply of natural gas from any cause rendering Seller unable to meet the combined demands of the several purchasers of gas from it including Buyer, Seller shall to the best of its ability apportion such quantity of gas as it may have available for delivery among such purchasers in proportion to the respective maximum demands upon Seller theretofore established by them. In the event of a substantially total failure of delivery by Seller for an unreasonable time, Buyer shall have the right to terminate this contract.

Section 13. Should Seller at any time during the term hereof supply gas to any public utility company for use east of the Mississippi River, or for resale directly or indirectly to any public utility company for such use, at a rate which when applied to the entire quantity of gas taken by such purchaser in any month results in a lower price to such purchaser for such gas than the cost to such purchaser of such gas if taken at the price set forth in Section 1 of this Article, Buyer shall have the right thereafter to purchase, at an equivalent rate, having regard to the maximum daily demand of and the quantity of gas taken by such other purchaser, all gas taken by it hereunder whether such rate is expressed in the form stated in this contract or otherwise.

Section 14. If at any time a difference of opinion shall arise between the parties hereto in regard to their respective rights, duties and obligations under such provisions of this contract as by their express terms may be referred to [fol. 12-27] arbitration, the question in dispute shall be referred to a Board of Arbitrators consisting of three (3) competent disinterested persons skilled in the particular matter which is the subject of dispute. The party desiring such arbitration shall give written notice thereof to the other party setting forth definitely therein the point or points in dispute, and shall in such notice name a person selected by it to act as one of the arbitrators. The other party shall within twenty (20) days after receipt of such notice name by notice to the first party a person to act as a second arbitrator. In the event that such other party shall fail within such twenty (20) day period to name a second arbitrator, the first party shall thereupon name the second arbitrator. The two (2) arbitrators chosen as above provided shall select the third arbitrator. If the said two (2) arbitrators shall be unable to agree upon a third arbitrator within twenty (20) days after their appointment, then such third arbitrator shall be named and selected by the person who at the time shall be the senior Judge, in point of service, of the United States District Court for the Eastern Division of the Northern District of Illinois, and application may be made to such Judge for such purpose by either or both of the arbitrators so chosen upon two (2) days' notice in writing to the parties hereto. The Board of Arbitrators so chosen shall immediately proceed to hear and determine the point or points in dispute, after giving to each party hereto not less than five (5) days' notice of the time and place of meeting; and at the time and place appointed they shall proceed summarily to hear and dispose of the point or points in dispute unless in their judgment the meeting should be adjourned to a later day or days, of which adjournment like notice shall be given unless such notice is waived by both parties hereto, in which case the meeting may proceed at an earlier day. The determination [fol. 12-28] of such Board of Arbitrators, or a majority of them as to any point or points so submitted to them, shall be final and conclusive upon the parties hereto and said parties shall abide by such decision and perform the conditions thereof. All expenses connected with such arbitration, including a reasonable compensation to the arbitrators, shall be subject to the result of such arbitration and shall be borne and shared by the parties hereto, in such manner or in such proportion as the arbitrators shall award.

Section 15. There shall be no modification of the terms and provisions hereof except by the formal execution of supplementary written contracts.

Section 16. No waiver by either party of any one or more defaults by the other in the performance of any provision of this contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

Section 17. All notices to be given hereunder by Seller to Buyer shall be delivered by registered mail addressed to Buyer's president at 122 South Michigan Avenue, Chicago, Illinois, and all notices to be given hereunder by Buyer to Seller shall be delivered by registered mail addressed to Seller's vice-president at 20 North Wacker Drive, Chicago, Illinois, or such other place as the parties may designate for the purpose.

Section 18. The date of first delivery of gas hereunder, as the term is used in this contract, shall mean the date upon which Seller first begins the regular and continuous delivery of gas. The date of first delivery of gas hereunder shall be endorsed on this agreement in the space provided therefor, by the executive officers of the respective parties [fol. 12-29] and such endorsement shall become a part of this contract as fully as if said date were recited herein.

Section 19. This contract shall be and continue in effect for a period of fifteen (15) years from the date of first delivery of gas hereunder and thereafter for a further period of five (5) years upon the same terms and conditions if Seller shall, at least two (2) years before the expiration of said fifteen (15) year period, give Buyer written notice of its election so to extend said period. In the event Seller does not give such notice, Buyer shall have the refusal (which Buyer shall exercise within ninety (90) days after written notice to it) of that portion of any natural gas which Seller has available during said five (5) year period for delivery through its pipe line or pipe lines to Joliet or the other points of delivery hereunder, which bears the same proportion to the total gas so-available which the quantity of gas forming the basis for the capacity charge then payable by Buyer bears to the total quantity of gas which Seller's pipe line is then capable of delivering per day at Joliet, Illinois, at the prices which Seller can then obtain and is willing to accept for such gas from any other responsible purchaser or purchasers.

Section 20. Either party may assign the rights and obligations hereof to a corporation which shall receive the assets of such assignor and obligate itself to carry out the provisions hereof binding on such assignor but otherwise neither party shall assign this contract or any of its rights hereunder unless it shall first have obtained the consent thereto of the other party.

In Witness Whereof the parties have hereunto set their hands and caused their corporate seals to be hereunto [fol. 12-30] affixed by their respective officers thereunto duly authorized, at Chicago, Illinois, as of the day and year first above written.

Continental Construction Corporation, by H. O. Caster, President. (Corporate Seal.)

Attest: C. C. Kelly, Secretary.

Chicago District Pipeline Company, by W. G. Rudd, Vice President. (Corporate Seal.)

Attest: Frank L. Griffith, Assistant Secretary.

Approved as to form:

Cooke, Sullivan & Ricks, by F. L. Daily.

This is to certify that the date of first delivery of gas under this contract is October 16, 1931.

Floyd C. Brown, Vice President of Continental Construction Corporation. George F. Mitchell, President of Chicago District Pipeline Company.

Dated this 2nd day of November, 1931.

[fol. 12-31] Whereas the foregoing contract between Continental Construction Corporation (therein called "Seller" and hereinafter so referred to) and Chicago District Pipeline Company (therein called "Buyer" and hereinafter so referred to), dated July 25, 1931, contemplates the re-sale by Buyer of gas purchased by it thereunder from Seller to the undersigned Illinois corporations, under contracts between Buyer and the undersigned corporations, in accordance with the provisions of Section 2 of Article II of the foregoing contract, and a guaranty to Seller by each of said corporations to the extent therein and hereinafter stated of the performance by Buyer of its obligations to Seller thereunder; and

Whereas such guaranties by the undersigned constitute the primary consideration for the execution by Seller of the said contract, and Seller has made its execution thereof conditional upon the procuring by Buyer of the execution of the following express agreement of guaranty by the undersigned; and

Whereas the execution of the said contract by Seller will enure to the benefit of the undersigned:

Now Therefore, in consideration of the execution of the said contract by Seller, the undersigned The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois and Western United Gas and Electric [fol. 12-32] Company, Illinois corporations, hereby severally guarantee to Seller, its successors and assigns, the due and prompt performance by Buyer of its obligations to Seller under the said contract in accordance with the terms thereof, to the following extent: each of the undersigned corporations shall, and hereby agrees to, be obligated to Seller on the foregoing guaranty at any time during the term of the said contract for that proportion of Buyer's obligations to Seller thereunder which the firm money obligation of said corporation to Buyer for the purchase of gas under its contract with Buyer in the month with respect to which any amount is due bears to the aggregate firm money obligations of the three undersigned corporations to Buyer for the purchase of gas under their contracts with Buyer in such month; and the undersigned corporations severally agree, each for itself, that if Buyer shall be in default for a period of thirty (30) days in the payment of any sum due from it to Seller under its said contract with

Seller, and shall continue to be in default for a further period of thirty (30) days after demand in writing by Seller for payment, each of the undersigned corporations shall become obligated to pay directly to Seller its proportion, determined as above provided, of the amount or amounts then and from time to time thereafter due from Buyer to Seller under the said contract.

The undersigned hereby waive notice from Seller of any default by Buyer under its said contract with Seller, and agree that no delay or forbearance by Seller shall operate to relieve the undersigned in any way from their obligations hereunder.

In Witness Whereof the said corporations have hereunto set their hands and caused their respective corporate seals to be hereunto affixed by their proper officers thereunto [fol. 12-33] duly authorized, at Chicago, Illinois, as of the day and year first written in the said contract.

The Peoples Gas Light and Coke Company, by
George F. Mitchell, President. (Corporate Seal.)

Attest: Albert L. Tossell, Secretary.

Approved as to form:

Cooke, Sullivan & Ricks, by F. L. Daily.

Public Service Company of Northern Illinois, by
Britton I. Budd, President. (Corporate Seal.)

Attest: A. E. Patton, Secretary.

Approved as to form:

Isham, Lincoln & Beale.

Western United Gas and Electric Company, by
George R. Jones, President. (Corporate Seal.)

Attest: J. T. Parsons, Assistant Secretary.

[fol. 13] EXHIBIT "B" TO COMPLAINT

Agreement Between Natural Gas Pipeline Company of America and Chicago District Pipeline Company

Dated December 31, 1935

Agreement of Forbearance

[fol. 13-1] This Agreement, made and entered into this 31st day of December, 1935, by and between Natural Gas Pipeline Company of America, a Delaware Corporation (hereinafter referred to as "Seller"), and Chicago District Pipeline Company, an Illinois Corporation (hereinafter referred to as "Buyer"):

Witnesseth:

Whereas, on July 25, 1931, a certain contract was made and entered into between Continental Construction Corporation, a Delaware Corporation, and Chicago District Pipeline Company, an Illinois Corporation, covering the sale and purchase of certain quantities of natural gas, which contract is hereinafter referred to as the "Natural Gas Sales Contract of July 25, 1931"; and

Whereas, the said Natural Gas Sales Contract of July 25, 1931 contemplates the resale by Buyer of the natural gas purchased by it under said contract from Seller, to The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois and Western United Gas & Electric Company, Illinois corporations, under contracts between Buyer and the said last named three corporations, and a certain guaranty to Seller by each of said last three named corporations, of Buyer's obligations, to the extent stated (which corporations when referred to jointly will be referred to herein as the "Guarantor Companies"); and

Whereas, the said Guarantor Companies did, on the 25th day of July, 1931, execute an instrument whereby they severally guaranteed to Seller, its successors and assigns, the due and prompt performance by Buyer of its obligations to Seller under said Natural Gas Sales Contract of July 25, 1931, in accordance with the terms thereof and to the extent therein stated, which instrument is hereinafter referred to as the "Contract of Guaranty of July 25, 1931"; and

Whereas, on or about the 10th day of September, 1931, the said Continental Construction Corporation above referred to, through appropriate action by its Board of Direc- [fol. 13-2] tors in amending its Certificate of Incorporation, changed its name to Natural Gas Pipeline Company of America; and

Whereas, under the provisions of the said Contract of Guaranty of July 25, 1931, the said Guarantor Companies did waive notice by Seller of any default by Buyer under its said contract with Seller, and agreed that no delay or forbearance by Seller should operate to relieve the said Guarantor Companies in any way from their obligations under the said Contract of Guaranty of July 25, 1931; and

Whereas, Buyer did pay to Seller all sums billed to it by Seller for natural gas delivered under said Natural Gas Sales Contract of July 25, 1931, from the beginning of deliveries of natural gas thereunder until January 1, 1935, but refused to pay to Seller a portion of the sums of money billed to it by Seller for gas so delivered in the month of January, 1935, and each month thereafter to the date hereof; and

Whereas, it is now the desire of the parties hereto that Seller shall, from and after January 1, 1935 for the consideration hereinafter referred to, forbear during the remainder of the term of the Natural Gas Sales Contract of July 25, 1931, to enforce against Buyer certain of the payments due under the said Natural Gas Sales Contract of July 25, 1931, to the extent hereinafter stated.

Now, therefore, for and in consideration of the premises and of the promises, covenants and agreements of the parties hereto and of the sum of One Dollar ($1.00) in hand paid by Buyer to Seller and of other good and valuable considerations, it is agreed as follows:

Article I

Seller agrees:

First. That from and after January 1, 1935, it will forbear to enforce against Buyer the terms and provisions of the said Natural Gas Sales Contract of July 25, 1931 to the [fol. 13-3] extent of the amount by which the capacity charge of five dollars and fifty-three and fifty-eight hundredths cents ($5.5358) per thousand (1,000) cubic feet of natural gas, provided for in sub-section (d) of Section 1 of Article III of the said Natural Gas Sales Contract of July 25, 1931, exceeds an amount of five dollars and twenty-five cents ($5.25) per thousand (1,000) cubic feet, with the same effect as if said sub-section (d) of Section 1 of Article III of said contract had in the first instance read as follows:

"(d) The amount of the capacity charge hereinbefore in sub-sections (a), (b) and (c) of this Section referred to shall, for any month, be determined by applying to the quantity of gas hereinbefore defined as the basis for the capacity charge for such month a rate of five dollars and twenty-five cents ($5.25) per thousand (1,000) cubic feet."

Second. That except as maximum demands larger than those mentioned below may from time to time actually be created by Buyer in accordance with the provisions of sub-section (c) of Section 1 of Article III of said Natural Gas Sales Contract of July 25, 1931, it will forbear to enforce against Buyer for each month of the year 1935 payment of a capacity charge based on any quantity of gas larger than one hundred ten million (110,000,000) cubic feet of gas per day, and for the month of January, 1936 and each month thereafter of the term of said Natural Gas Sales Contract of July 25, 1931, will forbear to enforce against Buyer a capacity charge based on any quantity of gas in excess of one hundred twenty million (120,000,000) cubic feet of gas per day, with the same effect as if Section 13 of Article I, Section 1 of Article II, and sub-section (c) and sub-section (f) of Section 1 of Article III of said Natural Gas Sales Contract of July 25, 1931, had in the first instance read as follows:

Section 13, Article I:

"That if natural gas shall hereafter be discovered in commercial quantities in a field or fields generally adjacent to the territory supplied by Buyer, and/or the purchasers of gas from Buyer, with gas purchased hereunder, unless [fol. 13-4] Seller shall (a) either take such steps as may be necessary to acquire such supply of natural gas and deliver the same to Buyer hereunder; provided, that if the quality of such supply of natural gas is different from that specified in this contract, Buyer shall have agreed in writing to take and pay for the same; or (b) shall co-operate with Buyer in acquiring such supply for Buyer's use or for other disposition agreeable to Buyer; then Buyer may at its election purchase all or any part of such supply of natural gas and to the extent of the quantity so purchased shall, despite any provision of this contract to the contrary, be relieved from its obligations to Seller hereunder as then existing, except its obligation to pay a capacity charge for each month of the year 1935 based upon a quantity of gas not less than one hundred ten million (110,000,000) cubic feet of gas in a day, and, for each month of the year 1936 and of subsequent years, upon a quantity of gas not less than one hundred twenty million (120,000,000) cubic feet of gas in a day."

Section 1, Article II:

"That it will, during the period up to and including October 31st, 1936, purchase from Seller all of its natural gas requirements and/or all the natural gas requirements for any purpose of the companies named in Section 2 of this Article, (except the natural gas requirements of Western United Gas and Electric Company for its properties in the State of Illinois located south of an east and west line through Peoria, Illinois), up to and including a maximum amount of two hundred twenty-five million (225,000,000) cubic feet per day; that it will pay to Seller therefor at the price hereinafter in Section 1 of Article III hereof set forth; that for each month of the year 1935 it will pay to Seller, as a minimum, a capacity charge (as more particularly defined in Section 1 of Article III hereof) based on a delivery hereunder of one hundred ten million (110,000,000) cubic feet of gas in a day, and that for each month of the year 1936 and of subsequent years it will pay to Seller, as a minimum, a capacity charge (as so defined) based on a delivery hereunder of one hundred twenty million (120,000,000) cubic feet of gas in a day; that if pursuant to a request made by Buyer on or prior to March 1st in any year up to and including 1936 as provided in [fol. 13-5] Section 4 of Article I hereof Seller shall make available or furnish such pipeline capacity as will enable it to deliver the quantity of gas per day so requested by Buyer, Buyer will pay a capacity charge thereon commencing with and after the date on which Seller shall become obligated under the terms of Section 4 of Article I hereof to stand ready to deliver such requested quantity, or commencing with and after any later date, not more than fifteen

(15) days thereafter, on which Seller shall first actually so stand ready, provided that if Seller shall fail so to stand ready to deliver such requested quantity of gas per day on the date specified therefor in Section 4 of Article I hereof, or within fifteen (15) days thereafter, but shall so stand ready within one (1) year from the date so specified, Buyer's obligation to pay a capacity charge on such requested quantity per day, so far as the same represents an increase over the capacity charge otherwise payable by Buyer, shall arise one (1) year from the date so specified."

Sub-section (c), Section 1, Article III:

"During the period from and after November 1, 1932, Buyer's maximum demand as applicable to any day of such period shall be the largest daily quantity of gas taken by it from Seller on that or any prior day of said period and in any event not less than the maximum demand applicable to February 29, 1932. The capacity charge payable by Buyer for any month of said period shall be based upon the average of the maximum demands applicable to each of the several days of such month, but in no event shall the capacity charge payable for any month of the year 1935 be based upon a quantity of gas less than one hundred ten million (110,000,000) cubic feet, and in no event shall the capacity charge payable for any month of the year 1936 or of any subsequent year be based upon a quantity of gas less than one hundred twenty million (120,000,000) cubic feet as hereinbefore provided in Section 1 of Article II hereof."

"The commodity charge payable by Buyer for any month of said period shall be six cents ($.06) per thousand (1,000) cubic feet of gas taken by Buyer hereunder in such month."

Sub-section (f), Section 1, Article III:

"In the event of the failure or inability of Seller to de- [fol. 13-6] liver during any one or more days the amount of gas which Buyer desires to take, up to but not exceeding the maximum demand applicable to such day or days, then the quantity of gas representing the basis for the capacity charge for the month in which such day or days occur shall be reduced by a quantity equal to the quotient arrived at by dividing by the number of days in such month the aggregate of the differences between the quantities of gas delivered on such day or days and the quantities forming the bases for the capacity charges applicable to such day or days.''

''If during the period up to January 1, 1935, a reduction of the capacity charge in any month under the provisions of this sub-section (f) of this Section results from a failure or inability of Seller to deliver, for fifteen (15) or more consecutive days commencing between October 16th and the following February 13th, inclusive, or for sixty (60) or more consecutive days commencing between February 14th and the following October 15th, inclusive, such reduced capacity charge shall be the monthly capacity charge thereafter until a larger capacity charge is established by application of the provisions of sub-section (c) of this Section, or until Buyer is required by the terms of Section 1, of Article II hereof to pay a capacity charge based upon the delivery of one hundred ten million (110,000,000) cubic feet of gas in a day during the year 1935 and one hundred twenty million (120,000,000) cubic feet of gas in a day during the year 1936 and of the subsequent years of this contract. If on and after January 1, 1935, Seller shall fail or be unable for fifteen (15) or more consecutive days commencing between October 16th and the following February 13th, inclusive, or for sixty (60) or more consecutive days commencing between February 14th and the following October 15th, inclusive, to deliver the quantity of gas which Buyer desires to take, up to but not exceeding the maximum demands applicable to such days (or up to one hundred ten million (110,000,000) cubic feet on any day during the year 1935 if the maximum demand applicable to such day is less, or up to one hundred twenty million (120,000,000) cubic feet on any day during the year 1936 or any subsequent year if the maximum demand applicable to such day is less), the capacity charge then otherwise payable by Buyer shall be reduced to the extent of such failure or inability, as averaged over said days, but if by such reduction the basis for the capacity charge shall have been reduced to a quantity of gas less than one hundred ten million (110,000,000) cubic feet in the year 1935 and less than one hundred twenty million (120,000,000) cubic feet in the year 1936 and subsequent years, then upon Seller's again becoming able to make deliveries in the quantities desired by Buyer, Buyer shall resume the payment of a capacity charge based

[fol. 13-7]

on a delivery of one hundred ten million (110,000,000) cubic feet per day in the year 1935 and one hundred twenty million (120,000,000) cubic feet per day in the year 1936 and subsequent years, or such larger quantity if any as shall thereafter be established as the basis of the capacity charge by application of the provisions of sub-section (c) of this Section.''

Third. That it will not claim against said Guarantor Companies payment for any of the sums of money forborne by this instrument.

Article II

Buyer agrees:

First. That it will pay to Seller, coincident with the execution of this agreement, that portion of the sums of monies which it has so withheld and refused to pay to Seller since January 1, 1935, as aforesaid, which is calculated by applying the provisions of this agreement as if the same had been executed on or prior to January 1, 1935, together with interest thereon from the respective dates of such withholdings to the date of payment, at the rate of six per cent (6%) per annum, and will, during the remainder of the term thereof, pay to Seller the sums of money due under the provisions of said Natural Gas Sales Contract of July 25, 1931, excepting only the sums of money so agreed to be forborne by Seller under the terms and provisions of this instrument.

Article III

The parties hereto mutually agree:

First. That the making of this agreement is an act which comes within the definition of a forbearance as that term is [fol. 13-8] used in the said Contract of Guaranty of July 25, 1931; and that nothing in this agreement or in the action of the parties in executing the same is understood by the parties to relieve the Guarantor Companies or any of them from any obligations which they or any of them may have under the said Contract of Guaranty of July 25, 1931, except to the extent that Buyer is or will be relieved hereby from any agreement or any obligations under the said Natural Gas Sales Contract of July 25, 1931.

Second. Nothing herein contained shall be construed in any respect to decrease, alter, change or amend any of the obligations of Seller under the Natural Gas Sales Contract of July 25, 1931, it being the intention only that the payment of certain money obligations by Buyer set forth in the said Natural Gas Sales Contract of July 25, 1931 shall be forborne by Seller to the extent herein stated.

In Witness Whereof, the parties hereto have caused this instrument to be executed by their proper officers thereunto duly authorized and their corporate seals to be affixed as of the day and year first above written.

Natural Gas Pipeline Company of America, by (Signed) Floyd C. Brown, Vice-President.

Attest: (Signed) S. E. Campbell, Secretary. (Corporate Seal.)

Chicago District Pipeline Company, by (Signed) Frank L. Griffith, Vice-President.

Attest: (Signed) Eskil I. Bjork, Assistant Secretary. (Corporate Seal.)

[fol. 13-9] The undersigned The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois and Western United Gas and Electric Company, all Illinois corporations, being the parties signatory to a certain instrument dated July 25, 1931, sometimes heretofore referred to by said parties as a Contract of Guaranty, which said instrument was executed in connection with a certain contract, sometimes referred to as the Natural Gas Sales Contract of July 25, 1931, executed as of the same date by and between Natural Gas Pipeline Company of America, a Delaware corporation, and Chicago District Pipeline Company, an Illinois corporation, do hereby severally acknowledge to said two last named corporations that the action of said Natural Gas Pipeline Company of America in entering into a certain forbearance agreement by and between it and said Chicago District Pipeline Company dated December 31, 1935, with reference to the provisions of the Natural Gas Sales Contract of July 25, 1931, which relate to the amounts payable thereunder, is understood and construed by the undersigned to be an act which comes within the definition of a "forbearance" as that term is used in the aforesaid Contract of Guaranty, and that nothing in the said forbearance agreement dated December

31, 1935 or in the action of the parties thereto in executing the same is or will be understood by the undersigned to relieve the undersigned or any of them from any obligations which they or any of them may have under the said Contract of Guaranty, except to the extent that Chicago District Pipeline Company is or may be relieved by the said forbearance agreement dated December 31, 1935, from any obligations which it may have under the said Natural Gas Sales Contract of July 25, 1931.

Dated December 31, 1935.

[fol. 13-10] The Peoples Gas Light and Coke Company, by (Signed) George F. Mitchell, President.

Attest: (Signed) Albert L. Tossell, Secretary. (Corporate Seal.)

Public Service Company of Northern Illinois, by (Signed) Britton I. Budd, President.

Attest: (Signed) A. E. Patton, Secretary. (Corporate Seal.)

Western United Gas and Electric Company, by (Signed) George R. Jones, President.

Attest: (Signed) Murray D. Smith, Secretary. (Corporate Seal.)

[fol. 13a] EXHIBIT "C" TO COMPLAINT

ILLINOIS COMMERCE COMMISSION, STATE OF ILLINOIS

25218

ILLINOIS COMMERCE COMMISSION, on Its Own Motion

vs.

CHICAGO DISTRICT PIPE LINE COMPANY

Citation to Show Cause Why There Should Not be a Reduction in Rates Charged for Natural Gas to Distributing Companies in the State of Illinois

Citation

Whereas, it is the duty of this Commission, as a regulatory body, to institute investigations of the utilities under its jurisdiction from time to time to determine whether the rates charged are just and reasonable; and

Whereas, the Chicago District Pipe Line Company supplies natural gas to Peoples Gas Light and Coke Company, Western United Gas and Electric Company, and Public Service Company of Northern Illinois at rates filed with this Commission pursuant to an order which specifically provided "that the consent herein should be granted with the express reservation and upon the condition that nothing herein contained shall in any manner affect the Commission's power at any time hereafter, by appropriate proceedings, to inquire into and determine the reasonableness of the cost of gas to the Chicago District Pipe Line Company;" and

Whereas, there is now pending before this Commission Case No. 24792, being The Peoples Gas Light and Coke Company in the matter of proposed advances in rates for [fol. 13b] gas service in Chicago, stated in Rate Schedule Ill. C. C. No. 19 rendered by said company; and

Whereas, one of the largest items of operating expense of said Peoples Gas Light and Coke Company is the cost of natural gas purchased by it from Chicago District Pipe Line Company being in excess of $10,000,000 per year; and

Whereas, Chicago District Pipe Line Company, Western United Gas and Electric Company, Public Service Company of Northern Illinois and Peoples Gas Light and Coke Company are all affiliates of Natural Gas Pipe Line Company of America which sells gas to Chicago District Pipe Line Company which it, in turn, resells to Western United Gas and Electric Company, Public Service Company of Northern Illinois and Peoples Gas Light and Coke Company; and

Whereas, a preliminary investigation of the records available to the Commission discloses that the charge for gas purchased by said Chicago District Pipe Line Company from Natural Gas Pipe Line Company of America is excessive and unreasonable; and

Whereas, the cost of gas sold to Chicago District Pipe Line Company by Natural Gas Pipe Line Company of America is the largest item of operating expense of said Chicago District Pipe Line Company; and

Whereas, the determination of the true operating income of Peoples Gas Light and Coke Company depends in part upon the reasonableness of the charges to it for gas sold to it by Chicago District Pipe Line Company; and

[fol. 13c] Whereas, in the opinion of the Commission, the matters above recited constitute good cause why the rates of Chicago District Pipe Line Company should now be investigated and that company should be required to demonstrate that its present rates are not excessive and should not be reduced;

Now, therefore, be it resolved

That the Chicago District Pipe Line Company should be required to show cause if any there be why its rates charged for gas sold to operating companies should not be reduced.

It is therefore ordered that the Chicago District Pipe Line Company be and it is hereby cited to appear before the Commission at its offices in the City of Chicago, Illinois, Room 2600, 1 North LaSalle Street on the 15th day of December, 1936, at the hour of 10:00 A. M. Central Standard Time, to show cause if any there be why there should not be a reduction in rates charged by it for gas sold to operating companies in the State of Illinois.

By order of the Commission at Springfield, Illinois, this 17th day of November, A. D. 1936.

William W. Hart, Secretary. (Seal.)

[fol. 13d] ILLINOIS COMMERCE COMMISSION, STATE OF ILLINOIS

Certificate re 25218

I, William W. Hart, do hereby certify that I am Secretary of the Illinois Commerce Commission of the State of Illinois and keeper of the records of said Commission.

I further certify that the above and foregoing is a true, correct and complete copy of order made and entered of record by said Commission on the 17th day of November, A. D. 1936.

Given under my hand and the seal of said Illinois Commerce Commission at Springfield, Illinois, this 18th day of November, A. D. 1936.

William W. Hart, Secretary. (Seal.)

[fol. 13e] EXHIBIT "D" TO COMPLAINT

ILLINOIS COMMERCE COMMISSION, STATE OF ILLINOIS

25218

ILLINOIS COMMERCE COMMISSION, on Its Own Motion

vs.

CHICAGO DISTRICT PIPELINE COMPANY

Citation to Show Cause Why There Should Not be a Reduction in Rates Charged for Natural Gas to Distributing Companies in the State of Illinois

Interlocutory Order

By the COMMISSION:

This proceeding was begun by a citation issued by this Commission against the Chicago District Pipeline Company on November 17, 1936, ordering said company to appear and show cause, if any there might be, why there should not be a reduction in rates for gas sold at wholesale by said company to The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois and Western United Gas and Electric Company.

Hearing in this matter was set for December 15, 1936 and was continued on that date to December 18, 1936. No testimony was heard on that date and the case was again continued to January 13, 1937. On the last mentioned date the company presented two witnesses, Mr. William C. Rudd, Vice-president of the company, and Mr. Frank L. Griffith, Vice-president and Comptroller of the company. The case was then continued to January 20, 1937, on which date Mr. Frank L. Griffith testified further when the company closed its direct case. Since that time several hearings have been held at which counsel for the Commission has carried on cross examination of company witnesses.

[fol. 13f] It appears from the testimony in the record that Chicago District Pipeline Company is an Illinois corporation operating as a public utility engaged in the business of supplying gas at wholesale to three operating utility companies who are engaged in the business of supplying gas to consumers in the Chicago area.

The Chicago District Pipeline Company produces no gas but purchases and sells only natural gas which it receives from Natural Gas Pipe Line Company of America, taking delivery thereof at the terminus of a 24-inch pipe line from Texas to Joliet, Illinois.

The Natural Gas Pipe Line Company of America is an interstate pipe line operator, which transports natural gas from the fields located in the Panhandle district in Texas through its pipe line to a point located southwest of Joliet in Illinois, where it is delivered to Chicago District Pipeline Company.

The price which Chicago District Pipeline Company pays to said Natural Gas Pipe Line Company of America for this gas is determined by a contract between said Chicago District Pipeline Company and Natural Gas Pipe Line Company of America, which has been introduced in evidence in this case as Company Exhibit 2. It further appears from the record in this case in Company Exhibit 9 that the operating expenses of Chicago District Pipeline Company for 1936 were $12,818,713.89, of which amount the sum of $12,362,268.15 was paid to Natural Gas Pipe Line Company of America for gas purchased from said company under the terms of the contract referred to above.

In case Nos. 21261, 21262, 21263, 22386, 22387, and 22388, consolidated, testimony on behalf of the respondent here was introduced as to estimated profits of Natural Gas Pipe [fol. 13g] Line Company of America from said business, and as to the actual profits earned by said company to February, 1932. On the basis of the evidence in those cases the Commission allowed Chicago District Pipeline Company to file the schedule of rates (Company Exhibit 8), which is the subject of investigation here. After three full years of operation under the present arrangement it is now imperative that the Commission be advised as to the experience of these companies with respect to the transactions between them.

It appears from the record that the stock of Natural Gas Pipe Line Company of America is owned and held by six corporations in varying percentages, with Natural Gas Investment Company owning 26.6 per cent of that stock. It further appears that 79.54 percent of the stock of Natural Gas Investment Company is owned by The Peoples Gas Subsidiary Company, a wholly owned subsidiary of The

Peoples Gas Light and Coke Company. The stock of Chicago District Pipeline Company, respondent here, is entirely owned by Natural Gas Investment Company.

It further appears from the record that George F. Mitchell, President of Chicago District Pipeline Company, is President and Director of Natural Gas Investment Company and a Director of Natural Gas Pipe Line Company, and also that H. P. Sedwick, one of the Directors of Chicago District Pipeline Company, is also a Vice-President and Director of Natural Gas Pipe Line Company, and a Director of Natural Gas Investment Company.

Section 8a of "An Act concerning public utilities," in force July 1, 1921, as amended, provides (Par. 2):

[fol. 13h] "The Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with public utilities under the jurisdiction of the Commission to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the Commission may prescribe. For the purpose of this section the phrase 'affiliated interests' means:

"* * * (c) Every corporation, 10 per centum or more of whose voting capital stock is owned by any person or corporation owning 10 percentum or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of 10 percentum or more of voting capital stock; * * * (f) Every corporation which has one or more elective officers, or one or more directors in common with such public utility; * * *"

Therefore, the Commission having considered the evidence which has up to now been introduced in this cause is of the opinion and finds:

(1) that it has jurisdiction of the subject matter of this proceeding and of the parties involved herein;

(2) that Chicago District Pipeline Company is a public utility under the jurisdiction of this Commission engaged in the business of supplying gas at wholesale to privately owned retailing public utility companies;

(3) that Natural Gas Pipe Line Company of America carries on certain transactions with said Chicago District Pipeline Company, to-wit: the sale of gas by said Natural Gas Pipe Line Company of America to Chicago District Pipeline Company under the terms of a contract dated July 25, 1931 and certain agreements supplemental thereto;

(4) that 26.62 per cent of the stock of said Natural Gas Pipe Line Company of America is owned by Natural Gas Investment Company; that 100 percent of the stock of Chicago District Pipeline Company is owned by said Natural Gas Investment Company;

(5) that George F. Mitchell, President of Chicago District Pipeline Company, is President and Director of Natural Gas Investment Company and a Director of Natural Gas Pipe Line Company of America;

[fol. 13-i] (6) that H. P. Sedwick is a Director of both Chicago District Pipeline Company and Natural Gas Investment Company and a Vice President and Director of Natural Gas Pipe Line Company of America;

(7) that by virtue of said common ownership of stock and said common directors said Natural Gas Pipe Line Company of America is an affiliate of Chicago District Pipeline Company within the meaning of Section 8a of "An Act concerning public utilities", in force July 1, 1921, as amended;

(8) that Ralph W. Gallagher, then Director of Continental Construction Company (the name of which was later changed to Natural Gas Pipe Line Company of America) was called as a witness by Chicago District Pipeline Company and that he testified as to estimated investment, expenses and earnings of the pipe line project; and that Frank L. Griffith, then Assistant Secretary of Chicago District Pipeline Company and Natural Gas Investment Company, now director and Vice-President and Director, Vice-president and Comptroller of those companies, respectively,

sponsored an exhibit purporting to show the earnings, expense and investment of Natural Gas Pipe Line Company of America as of February 29, 1932;

(9) that it is now imperative that the Commission be advised as to the actual experiences of said Natural Gas Pipe Line Company of America and Chicago District Pipeline Company in respect to the sale of gas to the latter by the former; that the said Natural Gas Pipe Line Company of America should be required to submit reports with respect to such transactions and that the said Natural Gas Pipe Line Company of America should make available to the Commission all accounts and records relating to said transactions, including any accounts and records, any portion of which may be applicable to such transactions.

It is Therefore Ordered by the Illinois Commerce Commission that Natural Gas Pipe Line Company of America be, and the same is hereby ordered and directed to file forthwith in this proceeding on or before the Fifteenth (15th) day of March, A. D. 1937, a true and accurate report as to the cost of the property of said Natural Gas Pipe Line Company of America which is used in supplying natural gas to said Chicago District Pipeline Company and [fol. 13-j] a statement of the income and expenses in connection with supplying gas to said Chicago District Pipeline Company, or to report to this Commission, in substitution thereof, a true and accurate statement as to the cost of all of its property or properties used by it in the business of transporting and selling natural gas, together with a statement as to the income and expenses for such operations.

It is Further Ordered that the said Natural Gas Pipe Line Company of America make available for the examination of the Commission, or such of its officers, agents and employees as it may designate, all of its accounts and records relating to transactions between the said Natural Gas Pipe Line Company of America and the said Chicago District Pipeline Company, including all accounts and records as to joint or several expenses, any portion of which may be applicable to said transactions.

By order of the Commission at Springfield, Illinois, this Third (3rd) day of March, A. D. 1937.

(Signed) William W. Hart, Secretary. (Seal.)

[fol. 14] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR PRELIMINARY INJUNCTION AND FOR THE ORGANIZATION OF A THREE JUDGE COURT AS PROVIDED BY SECTION 266 OF THE JUDICIAL CODE.—Filed March 19, 1937

To the Honorable Judges of the District Court of the United States, for the Northern District of Illinois:

Upon bill of complaint herein, verified on the 11th day of March, A. D. 1937, and upon the proceedings had and to be had herein, the Natural Gas Pipeline Company of America, a corporation, the plaintiff above named, makes application to Your Honors for a writ of injunction enjoining and restraining, pending the final judgment in this action, and until further order of this court, the defendants and each of them, and their and each of their officers, agents, servants and employees, and any and every person acting under and by virtue of the authority of the order of the Illinois Commerce Commission of the State of Illinois, dated March 3, 1937, and the Public Utilities Act of the State of Illinois, each referred to and described in said bill of complaint, and any other law of the State of Illinois, insofar as any of said laws relates or provides for the enforcement of said order of Illinois Commerce Commission, dated March 3, 1937, from in any way enforcing or attempting to enforce the provisions of said order of Illinois Commerce Commission, dated March 3, 1937, against the plaintiff herein, and from bringing any action thereon to recover or enforce the fines and penalties imposed by said Public Utilities Act for violation or nonobedience of the orders of the Illinois Commerce Commission, and from taking any other action directly or indirectly to enforce said order of March 3, 1937; and plaintiff prays Your Honors to call to Your Honors' assistance to hear and determine this application, two other judges in accordance with the provisions of Section 266 of the Judicial Code [fol. 15] of the United States, and to expedite the hearing of this application, and set the same down for hearing at the earliest practical date; and for such other and further relief as to the Court may seem just and proper in the premises.

And the plaintiff shows Your Honors that it appears by the allegations of said bill of complaint that immediate and irreparable damage will be caused to said plaintiff unless a temporary restraining order is issued until the hearing of this application for an interlocutory injunction; and it is further prayed that said defendants be enjoined and restrained from enforcing said order of March 3, 1937 and from taking any steps or proceedings against the plaintiff, its directors, officers, agents or employees to enforce any penalties or any other remedy for disregarding said order, and from taking any other action, directly or indirectly, to enforce said order of March 3, 1937 in any manner or degree until said hearing on said application for an interlocutory injunction.

Dated March 19, 1937.

Natural Gas Pipeline Company of America, a Corporation, by Sidley, McPherson, Austin & Burgess, 11 S. LaSalle Street, Chicago, Illinois, Its Attorneys. J. J. Hedrick. Donald F. McPherson. Howard Neitzert.

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ORGANIZING A THREE JUDGE COURT UNDER SECTION 266 OF THE JUDICIAL CODE—March 19, 1937

This cause came on to be heard upon the motion of Natural Gas Pipeline Company of America, a corporation, the plaintiff in the above entitled cause, for an interlocutory injunction against James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane and Harry A. Barr, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Otto Kerner, Attorney General of the State of Illinois, defendants in the above cause;

And it appearing to this court that said bill of complaint seeks an interlocutory injunction restraining the enforcement and execution of a certain order of the Illinois Commerce Commission and a part of the Public Utilities Act of the State of Illinois, each described in said bill of complaint, by restraining the acts of James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane and Harry A. Barr, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Otto Kerner, Attorney General [fols. 17-22] of the State of Illinois, in the enforcement of such order and said Public Utilities Act upon the ground of the unconstitutionality of such order and statute, as provided by Section 266 of the Judicial Code.

It is ordered, adjudged and decreed as follows:

1. The Honorable William H. Holly, Judge of the above Court, hereby calls to his assistance to hear and to determine the application for an interlocutory injunction in this cause the Honorable Will M. Sparks, Judge of the Circuit Court of Appeals for the Seventh Circuit, and the Honorable John P. Barnes, Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division.

2. It is further ordered, adjudged and decreed that said defendants appear and show cause, if any they have, on Apl. 8th, 1937, why an interlocutory injunction should not issue as prayed for in said bill of complaint.

3. And it appearing to the Court that the defendants, by and through their attorneys, have stipulated and agreed with the Court and with the plaintiff that no steps or proceedings will be taken by said defendants against the plaintiff, its officers, directors, agents or employees, to enforce said order of Illinois Commerce Commission, dated March 3, 1937, or to enforce any penalties or any other remedy for disregarding said order until said hearing on said application for an interlocutory injunction, and that said defendants have further stipulated and agreed to take no other action, directly or indirectly, to enforce said order of March 3, 1937 in any manner or degree until said hearing on said application for an interlocutory injunction, the motion of the plaintiff for a temporary restraining order pending said hearing is hereby denied.

Dated March 19, 1937.
Enter:

William H. Holly, District Judge.

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

JOINT AND SEVERAL ANSWERS OF JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, JAMES D. MARNANE AND HARRY A. BARR, THE PERSONS WHO PRESENTLY CONSTITUTE THE ILLINOIS COMMERCE COMMISSION OF THE STATE OF ILLINOIS AND OTTO KERNER, ATTORNEY GENERAL OF THE STATE OF ILLINOIS—Filed April 6, 1937

These defendants and each of them for answer to the bill of complaint of the plaintiff in the above entitled cause say:

1. Admit the allegations in paragraph one of the bill of complaint.

2. Admit the allegations in paragraph two of the bill of complaint.

3. Admit that this is a suit of a civil nature between citizens of different states brought for the purpose of enjoining the enforcement of a certain order of the Illinois Commerce Commission, dated March 3, 1937, but deny that this suit arises under the Constitution or the laws of the United States of America, and deny that the value of the matter in controversy, exclusive of interest and costs, exceeds the sum of three thousand dollars, and therefore state that this Court should refuse to take jurisdiction of this cause.

4. Admit that the plaintiff is engaged in the sale, trans- [fol. 24] portation and delivery of natural gas from a point or points in the State of Oklahoma to distributors and consumers of natural gas in the States of Kansas, Nebraska, Iowa and Illinois, but allege that not less than 85 per cent of such natural gas is sold and delivered to distributors and consumers thereof in the State of Illinois; admit that such natural gas is transported from said point or points in the State of Oklahoma to said consumers or distributors of natural gas in the States of Kansas, Nebraska, Iowa and Illinois by means of pipelines and pumping stations; admit that plaintiff is engaged in interstate commerce, but

deny that its business and commerce is national in character; deny any knowledge or information as to whether or not the plaintiff is or is not engaged in intrastate commerce within the State of Illinois; admit that the plaintiff has not qualified to do an intrastate business within the State of Illinois under the terms and provisions of the laws of said state; allege that plaintiff is a public utility as is shown by its operations and its certificate of incorporation, a certified copy of which is attached hereto as Exhibit 1; allege that plaintiff is an "affiliated interest" of a public utility under the jurisdiction of the Illinois Commerce Commission within the meaning of Section 8a of "An Act concerning public utilities," approved June 29, 1921, as amended, being one of the laws of the State of Illinois; chapter 111a, Ill. State Bar Stats. 1935, hereinafter referred to as the Public Utilities Act, and that said Section 8a is applicable to plaintiff and that plaintiff is subject to its provisions.

5. Admit the allegations of paragraph five of the bill of complaint.

6. Admit the allegations of paragraph six of the bill of complaint.

7. Admit the allegations of paragraph seven of the bill of complaint.

8. Admit that plaintiff was not an original party to said citation or said proceedings against the Chicago District [fol. 25] Pipeline Company, but allege that the plaintiff was made and became a party to said citation and proceedings by virtue of the said order of March 3, 1937, made and entered by the Illinois Commerce Commission, a copy of which is set forth as Exhibit D in plaintiff's bill of complaint, which order was entered for the reasons therein set forth; allege that the service of said order upon the plaintiff constituted notice to the plaintiff and that the plaintiff is afforded an opportunity to be heard with respect to said order by virtue of a certain provision of Section 65 of the Public Utilities Act which provision is in words and figures as follows:

"* * * With respect to any rules, regulations, decisions or orders which the commission is authorized to issue without a hearing, and so issues, any public utility or other person or corporation affected thereby and deeming such rules, regulations, decisions or orders, or any of them, improper, unreasonable or contrary to law, may apply for a hearing thereon, setting forth specifically in such application every ground of objection which the applicant desires to urge against such rule, regulation, decision or order. The commission may in its discretion, grant or deny the application, and a hearing, if had, shall be subject to the provisions of this and the preceding sections."

9. Deny the allegation that the Chicago District Pipeline Company and the plaintiff are not now subject to common control through common stock ownership or in any other manner; admit all of the other allegations of paragraph 9 of the bill of complaint but allege that on July 25, 1931, when the contract between the plaintiff, then known as Continental Construction Corporation, and the Chicago District Pipeline Company was entered into, a copy of which contract is set forth as Exhibit A to plaintiff's bill of complaint, and prior thereto during the negotiations leading to the construction of said pipeline project and the execution of said contract, there was a common interest in said pipeline project between Chicago District Pipeline Company and the distributing companies, namely, The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois and Western United Gas and Electric Company on the one hand, and plaintiff and persons or corporations owning or controlling stock or other securities of the said plaintiff and gas acreage used to supply gas by said plaintiff, on the other, by reason of stock holding, [fol. 26] interlocking directorates and business understandings between said corporations and persons controlling or representing said corporations. Allege that no pipeline company other than plaintiff operates in or near the territory served by said Chicago District Pipeline Company. Allege that the agreement of forbearance executed by and between plaintiff and said Chicago District Pipeline Company on or about December 31, 1935 furnishes no safeguard or guaranty of the reasonableness of the price of gas sold to said Chicago District Pipeline Company by said plaintiff so as to warrant the use of said price as a test of the reasonableness of the operating expenses of said Chicago District Pipeline Company. Allege that The Peoples Gas Light and Coke Company in a proceeding now pending before the Il-

linois Commerce Commission docketed as No. 24792 by said Commission is seeking an increase of approximately 16 per cent in the rates charged by it for gas sold to consumers in the City of Chicago. Allege that the item of payment for natural gas purchased from Chicago District Pipeline Company is substantially more than 40 per cent of the total operating expenses of said The Peoples Gas Light and Coke Company. Allege that in order that said Illinois Commerce Commission might make a complete and proper investigation and determination of the rates and operating expenses of The Peoples Gas Light and Coke Company and Chicago District Pipeline Company, said Illinois Commerce Commission must determine the reasonableness of said payments by said The Peoples Gas Light and Coke Company to Chicago District Pipeline Company and by said Chicago District Pipeline Company to said plaintiff for natural gas purchased from it. Allege that such investigation and determination requires an investigation into the reasonableness of payments received by plaintiff herein by reason of the common interest hereinbefore alleged, and Section 8a of the Public Utilities Act provides the lawful and proper means for securing the information necessary to make such determination.

10. Deny any knowledge or information as to whether the affairs of the plaintiff and of the Chicago District Pipeline Company are controlled by their respective boards of directors and officers; admit that at the time of the negotiation for and the execution of the said contract of July 25, [fol. 27] 1931, the board of directors of the plaintiff corporation consisted of eight members and that said board has subsequently been enlarged to include nine members; deny any knowledge or information as to the number of members of the board of directors of the plaintiff corporation representing Natural Gas Investment Company or Insull, Son and Co. Inc. at any of the times mentioned in the bill of complaint, but allege that at all of the times mentioned in said bill of complaint the said Natural Gas Investment Company or Insull, Son and Co. Inc., Chicago District Pipeline Company and plaintiff corporation had two directors in common; deny any knowledge or information as to whether Natural Gas Investment Company, Insull, Son and Co. Inc., or any other of the corporations named in paragraph 9 of the bill of complaint have ever controlled or attempted to control said

board; deny upon information and belief the allegation that at none of the times mentioned in the bill of complaint was there any common control of the boards of directors of the plaintiff and of the Chicago District Pipeline Company; admit that since the date of plaintiff's incorporation one of the members of plaintiff's board of directors representing Natural Gas Investment Company or Insull, Son and Co. Inc. has been elected vice-president of Natural Gas Pipeline Company of America, but deny any knowledge or information as to whether said vice-president ever exercised any function of said office or took any part in the control or management of plaintiff's business or affairs as such officer or whether said vice-president received any compensation as vice-president; deny any knowledge or information as to whether since February 9, 1937, any of the directors representing Natural Gas Investment Company has been an officer of Natural Gas Pipeline Company of America.

?

11. Deny that the Illinois Commerce Commission pro- [fol. 28] poses, threatens or intends to regulate, supervise or control the contracts, rates or other affairs of the plaintiff, and deny that the attorneys, agents or representatives of the Illinois Commerce Commission or any of them have so stated; admit that the Illinois Commerce Commission proposes to exercise jurisdiction and control over the plaintiff to the extent authorized in Section 8a of the Public Utilities Act in the manner provided for in the order of the Illinois Commerce Commission entered on March 3, 1937; admit that for the purpose of exercising such jurisdiction and control the Illinois Commerce Commission proposes to inquire into the earnings, expenses and profits of the plaintiff, the value of its property and investments and the other business affairs of the plaintiff in so far as such earnings, expenses and profits and value of properties and investments and other business affairs relate to transactions with Chicago District Pipeline Company; admit that it is the avowed intention of said Illinois Commerce Commission to treat the Chicago District Pipeline Company and the Natural Gas Pipeline Company of America as affiliated corporations within the meaning of Section 8a of the Public Utilities Act, but deny that it is the intention of said Illinois Commerce Commission to regulate the business affairs of said corporations as a single enterprise under

the jurisdiction of said Illinois Commerce Commission or to take jurisdiction of and regulate the profits or income of the plaintiff; admit that it is the intention of the said Illinois Commerce Commission to exercise all power, control and dominion over the plaintiff which has been granted to said Illinois Commerce Commission by Section 8a of said Public Utilities Act.

12. Allege that the Illinois Commerce Commission is authorized, empowered and directed to inquire into, investigate and require the disclosure of the earnings, expenses and profits of the plaintiff and the value of its properties [fol. 29] and investments and the other business and affairs of the plaintiff in so far as such earnings, expenses or profits or the value of plaintiff's properties or investments or its other business or affairs relate to tr[illegible]actions with the Chicago District Pipeline Company; allege that the Public Utilities Act and particularly Section 8a thereof does apply to the plaintiff company, and deny that said act is wholly or in part null and void in so far as it confers upon the Commission jurisdiction and authority over the plaintiff, its officers or agents, and the plaintiff's business, books, records, contracts and affairs; allege that the Illinois Commerce Commission is authorized, empowered and directed to require the plaintiff to file with said Illinois Commerce Commission a report as to the cost of the property of the plaintiff which is used in supplying natural gas to said Chicago District Pipeline Company; allege that the Illinois Commerce Commission is authorized, empowered and directed to require the plaintiff to file a statement of the income and expenses of the plaintiff in connection with supplying gas to said Chicago District Pipeline Company; allege that the Illinois Commerce Commission is authorized, empowered and directed to require the plaintiff to make available for examination by said Illinois Commerce Commission or its officers, agents and employes, any of its accounts or records relating to transactions between said Natural Gas Pipeline Company of America and Chicago District Pipeline Company, including accounts and records as to joint or general expense, any portion of which may be applicable to said transactions; allege that the order of the Illinois Commerce Commission, dated March 3, 1937, is valid and enforceable.

13. Deny that said order of March 3, 1937, and Section 8a of said Public Utilities Act or either of them deprive the [fol. 30] plaintiff of property without due process of law or deny to the plaintiff the equal protection of the laws or subject plaintiff's books, records, papers or effects to unlawful searches and seizures; deny that said order and said section of said Public Utilities Act or either of them are in violation of or prohibited by the Constitution of the United States of America.

14. Deny that if the Illinois Commerce Commission is permitted to enforce said order of March 3, 1937, complained of by the plaintiff, said plaintiff will suffer unlawfully any inconvenience or expense or that its trade secrets, secret processes or methods of doing business will be exposed to its competitors or any other persons, or plaintiff's credit will be impaired or plaintiff will be hampered or hindered in its commerce or business affairs or any other fashion, if there is any, or will suffer any harm or injury; allege that the order of the Illinois Commerce Commission, dated March 3, 1937, the Public Utilities Act and Section 8a thereof, are valid and enforceable under the provisions of the Constitution of the State of Illinois; deny that enforcement of the order of the Illinois Commerce Commission, dated March 3, 1937, would burden, obstruct or hamper in any fashion whatsoever the carrying on of interstate commerce by the plaintiff; allege that the order of the Illinois Commerce Commission, dated March 3, 1937, entered under the authority of the Public Utilities Act and Section 8a thereof is a proper and necessary exercise of the police power of the state in regulating persons engaged in operation of public utilities in said state.

15 and 16. Allege that under the provisions of Section 65 of the Public Utilities Act set forth hereinbefore and Sections 63 et seq., providing for a review of commission action [fol. 31] by the courts of the state of Illinois, the plaintiff has been provided with a complete and adequate remedy at law for determining the validity of said order and Section 8a of the Public Utilities Act.

Allege that by virtue of Section 76 of said Public Utilities Act before any penalty could be assessed against said plaintiff for failure or refusal to comply with the order of said Illinois Commerce Commission dated March 3, 1937, or said Public Utilities Act, said plaintiff would have a full hearing before a court at which time said plaintiff would have an opportunity to attack the validity of said act or any portion thereof, or the validity of said order of March 3, 1937.

Wherefore the defendants deny that the plaintiff is entitled to the relief prayed for in the bill of complaint or any part thereof, and pray that the bill of complaint be dismissed with costs.

James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane and Harry A. Barr, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, and Otto Kerner, Attorney General of the State of Illinois, by (Sgd.) Otto Kerner, Attorney General of the State of Illinois, Attorney for Defendants. Montgomery S. Winning, James G. Skinner, Harry R. Booth, W. Robert Ming, Jr., Eugene L. Cohn, Lewis J. Freehof, Assistant Attorneys General, of Counsel.

[fol. 32] *Duly sworn to by James M. Slattery. Jurat omitted in printing.*

[fol. 33] Copy

EXHIBIT 1 TO ANSWER

Certificate of Incorporation of Continental Construction Corporation

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of 1915, and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

First. The name of the corporation is Continental Construction Corporation.

Second. The principal office of the corporation is to be located in the City of Dover, in the County of Kent, in the State of Delaware. The name of its resident agent is the

United States Corporation Company, whose address is No. 19-21 Dover Green in said city.

Third. The nature of the business of the corporation and the objects or purposes proposed to be transacted, promoted or carried on by it, are as follows, to wit:

To plan, devise, construct, build, erect, purchase, or otherwise acquire, improve, equip, repair, maintain, manage, operate, deal in, sell, demolish and otherwise dispose of and turn to account, any and all kinds of buildings, pipelines, transmission lines, distribution lines, plants, works, factories, structures, stores, warehouses, machines and machinery of all kinds, mains, pipes, conduits, ducts, services, [fol. 34] terminals, storage plants and equipment, installations, appliances and appurtenances of every kind and description connected with, incidental to, necessary, suitable, useful, convenient or appertaining to the carrying on of the businesses or any of them herein referred to;

To store, transport, buy and sell oil, gas, salt, brine, and other mineral solutions, and to produce oil and gas; with the right, power and authority to purchase, own, lay, construct, maintain and operate all such wells, pipelines, tanks, pumps, stations and all other property and facilities of whatever nature necessary or convenient to such business, and to exercise all other powers and rights as are incidental thereto;

To purchase, acquire, obtain by contract, concession or otherwise, condemn and/or exercise the right and/or power of eminent domain wherever the same may be permitted by law with respect to, take, hold, own, develop, improve, operate, lease, enjoy, control, manage or otherwise turn to account, mortgage, grant, sell, exchange, deal in, convey or otherwise dispose of any and all kinds of lands, real property, leases, concessions, licenses, immunities, powers, privileges, grants, rights-of-way, land patents, franchises, easements, tenements, hereditaments and interests of every description and nature whatsoever;

To manufacture, buy, sell, deal in, and to engage in, conduct and carry on the business of manufacturing, buying, selling and dealing in goods, wares and merchandise of every class and description;

To borrow money, and to make and issue notes, bonds, debentures, obligations and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, [fol. 35] without limit as to amount, and to secure the same by mortgage, pledge or otherwise upon the whole or any part of the property of the corporation; and generally to make and perform agreements and contracts of every kind and description;

To apply for, obtain, register, purchase, lease or otherwise to acquire and to hold, own, use, develop, operate and introduce, and to sell, assign, grant licenses or territorial rights in respect to, or otherwise to turn to account or dispose of, any copyrights, trade marks, trade names, good will, brands, labels, patent rights, letters patent of the United States or of any other country or government, inventions, improvements and processes, whether used in connection with or secured under letters patent or otherwise;

To acquire by purchase, subscription or otherwise, and to hold for investment or otherwise and to use, sell, assign, transfer, mortgage, pledge or otherwise deal with or dispose of stocks, bonds or any other obligations or securities of any corporation or corporations, association or associations; to merge or consolidate with any corporation in such manner as may be permitted by law; to aid in any manner any corporation whose stocks, bonds or other obligations are held or in any manner guaranteed by this corporation, or in which this corporation is in any way interested; *to aid in any* manner which shall be lawful and to guarantee the contracts and obligations of any person, firm, corporation or association in whom or in which this corporation is in any way interested; and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any such stock, bonds or other obligations, or to do any acts or things designed for any such pur- [fol. 36] pose; and while owner of any such stock, bonds or other obligations to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting powers thereon; to guarantee the payment of dividends upon any stock, or the principal or interest or both, of any bonds or other obligations, and the performance of any contracts;

To do all and everything necessary, suitable and proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers hereinbefore set forth, either alone or in association with other corporations, firms or individuals, and to do every other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the aforesaid business or powers or any part or parts thereof, provided the same be not inconsistent with the laws under which this corporation is organized;

The business or purpose of the corporation is from time to time to do any one or more of the acts and things hereinabove set forth, and it shall have power to conduct and carry on its said business, or any part thereof, and to have one or more offices, and to exercise any or all of its corporate powers and rights, in the State of Delaware, and in the various other states, territories, colonies and dependencies of the United States, in the District of Columbia, and in all or any foreign countries, but nothing herein contained shall authorize the corporation to carry on an agency and loan business in the State of Illinois or a railroad business in that state.

The enumeration herein of the objects and purposes of [fol. 37] this corporation shall be construed as powers as well as objects and purposes and shall not be deemed to exclude by inference any powers, objects or purposes which this corporation is empowered to exercise, whether expressly by force of the laws of the State of Delaware now or hereafter in effect or impliedly by the reasonable construction of the said laws.

Fourth. The total number of shares of stock which the corporation is authorized to issue is five hundred thousand (500,000) shares without par value.

The Board of Directors, without action by the stockholders, may issue and sell the authorized shares of the capital stock of the corporation from time to time, for such consideration and upon such terms as may be fixed from time to time by the Board of Directors, and all such shares of stock so issued shall be deemed fully paid and non-assessable, and the holder or holders of such shares shall not be liable to the corporation or to its creditors in respect thereof, or for any future payments thereon.

The minimum amount of capital with which the corporation will commence business is one thousand dollars ($1,000).

Fifth. The names and places of residence of each of the incorporators are as follows:

Name	Residence	No. of shares
Charles H. Jarvis	Dover, Delaware	4
J. Fenimore Wilson	Dover, Delaware	3
Melvin Hopkins	Dover, Delaware	3

[fol. 38] Sixth. The corporation is to have perpetual existence.

Seventh. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Eighth. The following provisions are inserted for the management of the business and for the conduct of the affairs of this corporation, and for further definition, limitation and regulation of the powers of this corporation and of its directors and stockholders;

(1) The number of directors of the corporation shall be such as from time to time shall be fixed by, or in the manner provided in the by-laws, but shall not be less than three. In case of any increase in the number of directors, the vacancies thus created may be filled by the directors or by the stockholders at an annual or special meeting as shall be provided in the by-laws.

(2) By a resolution or resolutions passed by a majority of the whole board, the board of directors may designate one or more committees, each committee to consist of two or more directors of the corporation, which to the extent provided in said resolution or resolutions or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation, or as may be determined from time to time by resolution adopted by the board of directors.

(3) The board of directors shall have power

[fol. 39] (a) Without the asse-t or vote of the stockholders, to make, alter, amend, change, add to, or repeal the by-laws of this corporation; to fix and vary ~~the~~ amount to be reserved as working capital; to authorize and cause to be executed mortgages and liens upon all the property of the corporation, or any part thereof; to determine the use and disposition of any surplus or net profits over and above the capital stock paid in, and to fix the times for the declaration and payment of dividends.

(b) With the consent in writing of the holders of a majority of the stock issued and outstanding, or upon the affirmative vote of the holders of a majority of the stock issued and outstanding, to sell, lease or exchange all of its property and assets, including its good will and its corporate franchises; upon such terms and conditions and for such consideration as the board of directors shall deem expedient and for the best interests of the corporation.

(c) To determine from time to time whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation (other than the stock ledger) or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the corporation unless expressly so [fol. 40] authorized by statute or by a resolution of the stockholders or the directors.

(4) The directors in their discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the stock of the corporation which is represented in person or by proxy at such meeting and entitled to vote thereat (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the corporation and upon all the stockholders, as though it had been approved or ratified by every stockholder of the corporation, whether or not the contract or act would otherwise be open to legal attack because of directors' interest, or for any other reason.

(5) In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the

directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the corporation; subject, nevertheless, to the provisions of the Statutes of Delaware, of this certificate, and to any by-laws from time to time made by the stockholders; provided, however, that no by-laws so made shall invalidate any prior act of the directors which would have been valid if such by-law had not been made.

Ninth. The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate [fol. 41] of incorporation in the manner now or hereafter prescribed by law, and all rights and powers conferred herein on stockholders, directors and officers are subject to this reserved power.

The directors and officers of this corporation may be directors and officers in other corporations, and transactions and contracts of this corporation with said other corporations shall not be affected by the fact that the officers hereof are interested in or are directors or officers of such other corporation or corporations.

This corporation shall have the power to procure itself to be licensed or organized in any state or subdivision thereof of the United States, the District of Columbia, the territories, colonies or possessions of the United States, and in any foreign country.

In witness whereof, we have hereunto set our hands and seals, the 25th day of April, 1930.

Charles H. Jarvis. (L.S.) J. Fenimore Wilson. (L.S.) Melvin Hopkins. (L.S.)

In presence of: Lillian C. Hutchins, as to all.

[fol. 42] State of Delaware,
County of Kent, ss:

Be it remembered that on this 25th day of April, A. D. 1930, personally came before me, Lillian C. Hutchins, a Notary Public in and for the County and State aforesaid, Charles H. Jarvis, J. Fenimore Wilson, Melvin Hopkins, parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

Lillian C. Hutchins, Notary Public.

Lillian C. Hutchins, Notary Public, Appointed Sept. 4, 1929, for two years, Delaware.

[fol. 43] State of Delaware:

Office of Secretary of State

I, Charles L. Terry, Jr., Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of

Certificate of Incorporation of the "Continental Construction Corporation", as received and filed in this office the twenty-fifth day of April, A. D. 1930, at 9 o'clock A. M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover, this second day of April in the year of our Lord one thousand nine hundred and thirty-seven.

(Signed) Charles L. Terry, Jr., Secretary of State.
(Seal.)

[fol. 44]

Exhibit 1a to Answer

Certificate of Amendment of Certificate of Incorporation of Continental Construction Corporation

Adopted in Accordance With the Provisions of Section 26 of Chapter 65 of the Revised Code, as Amended, of the State of Delaware.

We, H. O. Caster, President, and E. E. McWhiney, Assistant Secretary, of Continental Construction Corporation, a corporation existing under the laws of the State of Delaware, do hereby certify under the seal of the said corporation as follows:

First. That it appears by the certificate of C. B. Wedum and John Kip, the Judges who were duly appointed by the stockholders of the corporation at a meeting duly called in accordance with the by-laws and the laws of the State of Delaware and held on the 8th day of December, 1931, at 2:15 o'clock in the afternoon, to conduct the vote of the stockholders for and against proposed amendments to the certificate of incorporation, that the persons or body corporate holding one thousand (1000) shares of the capital stock of the corporation, constituting not less than a majority of the issued and outstanding capital stock of the corporation; voted in favor of said amendments; that no shares of the capital stock voted against the proposed amendments.

[fol. 45] Second. That the following is a true and correct copy of the amended Article "FIRST" of the Certificate of amendment as it was adopted at the stockholders' meeting as aforesaid:

"First. The name of the corporation is Natural Gas Pipeline Company of America."

Third. That the following is a true and correct copy of the amended Article "FOURTH" of the Certificate of Incorporation as it was adopted at the stockholders' meeting as aforesaid:

"Fourth. The total number of shares *to* stock which the corporation is authorized to issue is one million five hundred thousand (1,500,000) shares without par value.

The board of directors, without action by the stockholders may issue and sell the authorized shares of the capital stock of the corporation from time to time, for such consideration and upon such terms as may — fixed from time to time by the board of directors, and all such shares of stock so issued shall be deemed fully paid and non-assessable, and the holder or holders of such shares shall not be liable to the corporation or to its creditors in respect thereof, or for any future payments thereon; provided, however, that the stockholders of record at the time of the issuance of additional shares of stock shall have a prior right to subscribe for and take additional shares of the capital stock of this Company in proportion to their then holdings of shares of stock in this Company.

The minimum amount of capital with which the corporation will commence business is one thousand dollars ($1,000)."

Fourth. That said amendments have been duly adopted in accordance with the provisions of Section 26 of Chapter

65 of the Revised Code, as amended, of the State of Delaware, and that the capital of the corporation will not be reduced under or by reason of said amendments.

In Witness Whereof we, H. O. Caster, President, and [fols. 46-47] E. E. McWhiney, Assistant Secretary, of Continental Construction Corporation, have signed this certificate and caused the corporate seal of the corporation to be hereunto affixed this 8th day of December, 1931.

H. O. Caster, President. E. E. McWhiney, Assistant Secretary. Continental Construction Corporation, 1930.

[fol. 48] State of New York,
County of New York, ss:

Be it remembered, that on this 8th day of December, 1931, personally came before me, Gertrude Gray, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn to take acknowledgment or proof of deeds, H. O. Caster, President of Continental Construction Corporation, a corporation of the State of Delaware, the corporation described in the foregoing certificate, known to me personally to be such, and that he, the said H. O. Caster, as such President, duly executed said certificate before me and acknowledged the said certificate to be his act and deed, and made on behalf of said corporation; that the signature of said President and of the Assistant Secretary of the said corporation to said foregoing certificate are in the handwriting of the said President and of the said Assistant Secretary of said corporation respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering the said certificate was duly authorized by the directors and stockholders of said corporation.

In witness whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

Gertrude Gray, Notary Public, New York County. N. Y. Co. Clk's No. 177, Reg. No. 2-G211. Term Expires March 30, 1933. (Seal of Gertrude Gray, Notary Public, New York County.)

[fol. 49] STATE OF DELAWARE:

Office of Secretary of State

I, Charles L. Terry, Jr., Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Amendment of Certificate of Incorporation of the "Continental Construction Corporation", as received and filed in this office the tenth day of December, A. D. 1931, at 9 o'clock A. M.

In testimony whereof, I have hereunto set my hand and official seal at Dover, this second day of April in the year of our Lord one thousand nine hundred and thirty-seven.

(Signed) Charles L. Terry, Jr., Secretary of State.
(Seal.)

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF C. E. HOLMES—Filed April 10, 1937

STATE OF ILLINOIS,
County of Cook, ss:

C. E. Holmes, of lawful age, being first duly sworn according to law, on his oath, deposes and says:

Affiant states that he resides at 1629 Lunt Avenue, Chicago, Illinois; that he is in the employ of Natural Gas Pipeline Company of America, a Delaware corporation, in the capacity of an engineer; that he is an engineer by profession, having received a degree in Engineering from Iowa State College, Ames, Iowa; that on June 19, 1924, he entered the employ of Empire Gas and Fuel Company and associated and affiliated companies of Bartlesville, Oklahoma, sometimes referred to as "Empire Companies."

[fol. 51] That in August, 1929, affiant was called from his duties with the Empire Companies of Bartlesville, Oklahoma to participate in the engineering phases of a natural gas project from the Texas Panhandle gas fields to the metropolitan area of Chicago, Illinois; that upon the formation of said company on April 25, 1930 he entered the employ of said company as an engineer.

Affiant further states that, among his duties as an engineer, he is in intimate contact with sales of natural gas by said company and knows the volume of such sales from the first delivery of natural gas to the present time, as well as the volume of sales of natural gas by The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois, Western United Gas and Electric Company (hereinafter referred to as the distributing companies) and Chicago District Pipeline Company.

Affiant further states that since October 16, 1931, the date upon which natural gas was first delivered to Chicago District Pipeline Company under the Natural Gas Sales Contract of July 25, 1931, between Chicago District Pipeline Company and Continental Construction Corporation (now Natural Gas Pipeline Company of America), there have been substantial reductions in the price of gas charged by said distributing companies to the industrial and domestic consumers in the Chicago metropolitan area; that in the year 1931, such reductions in the price of gas caused by the availability of natural gas and the price at which it was sold to [fol. 52] said distributing companies by Natural Gas Pipeline Company of America in said Chicago metropolitan area were such as to result in an annual saving to domestic and commercial consumers of gas of $2,789,000.00, and to industrial consumers of $350,000.00; that in the year 1932, additional rate reductions in said area by said distributing companies were such as to result in an annual saving to domestic and commercial consumers of gas of approximately an additional $142,000.00, and to industrial consumers of $70,000.00; that in the year 1933, additional rate reductions in said area by said distributing companies were such as to result in an annual saving to domestic and commercial consumers of gas of approximately an additional $1,200,000.00, and to industrial consumers of $500,000.00.

Affiant further states that from the said date of October 16, 1931 until the present time, the domestic and commercial consumers of gas in said area have benefited by rate reductions caused by the availability of natural gas and the price at which it was sold to said distributing companies by Natural Gas Pipeline Company of America in said area of approximately $21,000,000.00, and to industrial consumers of $4,000,000.00.

Further affiant saith not.

C. E. Holmes.

Subscribed and sworn to before me on the 7th day of April, 1937. Esther M. Wilson, Notary Public. My commission expires on the 28th day of May, 1939 (Seal.)

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF S. E. CAMPBELL—Filed April 10, 1937

STATE OF ILLINOIS,
County of Cook, ss:

S. E. Campbell, of lawful age, being first duly sworn according to law, on his oath, deposes and says:

Affiant states that he resides at 2200 Harrison Street, Evanston, Illinois; that he is Secretary of Natural Gas Pipeline Company of America and is the same person who made the affidavit introduced into the record in this case.

Affiant states that under the terms of the contract dated July 25, 1931 between Continental Construction Corporation (now Natural Gas Pipeline Company of America) and Chicago District Pipeline Company, the said Chicago District Pipeline Company, an Illinois corporation, receives its en- [fol. 54] tire supply of natural gas for domestic purposes, although there are in existence other contracts between Natural Gas Pipeline Company of America and Chicago District Pipeline Company providing for a supply of natural gas for boiler fuel and industrial purposes which are short term contracts and which are not involved in the above entitled case; that said Chicago District Pipeline Company in turn sells such natural gas which it secures under the terms of the above mentioned contract of July 25, 1931 to three corporations; namely, The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois and Western United Gas and Electric Company, all Illinois corporations (hereinafter referred to as the distributing companies); that the entire income of said Chicago District Pipeline Company is secured from said distributing companies on account of the sale to said distributing companies of the natural gas which it receives under said contract of July 25, 1931 from Natural Gas Pipeline Company of America and that under the rate schedules filed with the Illinois Commerce Commission by said Chicago District Pipeline Company, it only receives from the said distributing companies a sum of money equal to the price which it pays to Natural Gas Pipeline Company of America for said natural gas plus a small amount allowed by the Illinois Commerce Commission for operating and other expenses.

[fol. 55] Affiant further states that in the event the Illinois Commerce Commission should reduce the rates charged for natural gas by said Chicago District Pipeline Company to said distributing companies, said Chicago District Pipeline Company will not have sufficient income with which to pay said Natural Gas Pipeline Company of America for the natural gas which said Chicago District Pipeline Company purchases from it and that said Chicago District Pipeline Company will thereby be unable to comply with the terms of the said contract of July 25, 1931 and the Forebearance Agreement between Natural Gas Pipeline Company of America and Chicago District Pipeline Company dated December 31, 1935 attached to plaintiff's Bill of Complaint as an exhibit to the extent of the reduction in such rates which may be ordered by said Illinois Commerce Commission.

Further affiant saith not.

(Sgd.) S. E. Campbell.

Subscribed and sworn to before me on the 10th day of April, 1937. (Sgd.) Esther M. Wilson, Notary Public. My commission expires on the 28th day of May, 1939. (Seal.)

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF S. E. CAMPBELL—Filed April 10, 1937

STATE OF ILLINOIS,
County of Cook, ss:

S. E. Campbell, of lawful age, being first duly sworn according to law, on his oath, deposes and says:

Affiant resides at 2200 Harrison Street, Evanston, Illinois.

Affiant states that he is Secretary of Natural Gas Pipeline Company of America, a Delaware corporation, plaintiff in the above entitled action.

Affiant states that he is an engineer by profession; that he is a graduate of the University of Kansas, in the Department of Engineering; that in the year 1916, he entered the employ of Empire Gas and Fuel Company and affiliated companies, all of which were and are subsidiaries and affiliates of Cities Service Company, a Delaware corporation; [fol. 57] that while he was in the employ of said Empire Gas and Fuel Company and affiliated companies he served in various capacities in the Engineering Department and had a number of years experience in the engineering and construction phases of the natural gas, oil and refinery business; that on April 1, 1930, affiant entered the employ of Continental Construction Corporation, now Natural Gas Pipeline Company of America, as Assistant Chief Engineer, in charge of the construction under Mr. Floyd C. Brown, Vice-President and General Manager, and Mr. E. V. Kesinger, General Superintendent; that on the 19th day of November, 1930, among his other duties, affiant was elected Assistant Secretary of said corporation; that on July 1, 1931, affiant was placed in charge of operations as Superintendent of Operations; that on December 1, 1933, upon the resignation of the then Secretary of said corporation, this affiant was placed in charge of the Accounting Department of said corporation and gave up his duties as Superintendent of Operations; and that on November 3, 1934, he was elected Secretary of said corporation.

Affiant further states that he has read the Bill of Complaint filed in said action by plaintiff, together with the

Exhibits marked A, B, C and D, attached thereto, and particularly Exhibit D, entitled "Interlocutory Order", by the Illinois Commerce Commission, in the case of Illinois [fol. 58] Commerce Commission on its own motion vs. Chicago District Pipeline Company No. 25218, being a citation directed to the plaintiff, Natural Gas Pipeline Company of America, ordering and directing the said Natural Gas Pipeline Company of America on or before the 15th day of March, 1937 to file a true and accurate report as to the cost of the property of said Natural Gas Pipeline Company of America, which is used in supplying natural gas to said Chicago District Pipeline Company, and a statement of the income and expense in connection with supplying gas to said Chicago District Pipeline Company or to report to the Illinois Commerce Commission, in substitution thereof, a true and accurate statement as to the cost of all of its property or properties used by it in the business of transporting and selling natural gas, together with a statement as to the income and expense for such operations and, in addition, that said Natural Gas Pipeline Company of America make available for the examination of the Commission, or such of its officers, agents and employees as it may designate, all of its accounts and records relating to transactions between the said Natural Gas Pipeline Company of America and the said Chicago District Pipeline Company, including all accounts and records as to joint or several expenses, any portion of which may be applicable to said transactions.

[fol. 59] Affiant further states that, if Natural Gas Pipeline Company of America is required to comply with such Interlocutory Order of the Illinois Commerce Commission, it will be necessary for him to employ an outside firm of accountants to prepare and file with said Illinois Commerce Commission a true and accurate report as to the cost of the property of said Natural Gas Pipeline Company of America, which is used in supplying natural gas to said Chicago District Pipeline Company, and a statement of the income and expense in connection with supplying gas to said Chicago District Pipeline Company, or to report to the Commission, in substitution thereof, a true and accurate statement as to the cost of all of its property or properties used by it in the business of transporting and selling natural gas, together with a statement as to the income and expenses for such operations, inasmuch as the present office accounting force of Natural Gas Pipeline Company of America is not manned to the extent necessary to supply such information and prepare the reports required by said Interlocutory Order.

Affiant states further that, since he has been Secretary of Natural Gas Pipeline Company of America, he has had experience in a number of instances in hiring outside accountants, engaged in the general practice of accounting and auditing, and is informed as to the amount charged for such services; that in preparing such reports, so re-[fol. 60] quired by the said Illinois Commerce Commission and in making available to said Commission or its officers, agents or employees its accounts and records for examination, the cost and expense to which said Natural Gas Pipeline Company of America will be put will greatly exceed the sum of $3,000 and, if said Illinois Commerce Commission has the right, authority and jurisdiction to require such reports from Natural Gas Pipeline Company of America and to make available its records for examination from time to time, said company will be required to hire additional accountants for that purpose and the cost thereof will many times exceed the sum of $3,000.

Affiant further states that if said Natural Gas Pipeline Company of America is required to comply with said Interlocutory Order, its credit and business will be further irreparably damaged and injured in that it requires between one and two million dollars annually as a further investment in current additional facilities and betterments in order to maintain and keep in workable order and condition its said pipeline and facilities; and that, if it is finally determined that said Illinois Commerce Commission has the authority and jurisdiction over said Natural Gas Pipeline Company of America to require said company to do the things which it purports to have authority and jurisdiction to so require and if said Illinois Commerce Commission has the authority and jurisdiction which Natural [fol. 61] Gas Pipeline Company of America alleges in its petition said Illinois Commerce Commission, its officers, agents or employees intend to exercise over said company, it will not be able to secure the moneys necessary for such current improvements and betterment of its facilities and the said Natural Gas Pipeline Company of America will sustain a loss and damage in the impairment of its credit in an amount greatly in excess of $3,000.00 through its inability to maintain its service and fulfill its contract obligations.

Affiant further states that there is an important potential market for natural gas to the industries and municipalities located throughout the district which can be served by Natural Gas Pipeline Company of America, including the southern half of the state of Wisconsin and the northern part of the states of Illinois and Indiana. Natural gas can be supplied to the municipalities and to many of the industries located in this district at considerably less cost than the price paid for artificial gas and other fuels; yet, this district is now wholly unsupplied by natural gas except by Natural Gas Pipeline Company of America, which supplies gas to only a few municipalities and industries located in Northern Illinois and part of Indiana. Natural Gas Pipeline Company of America is anxious to extend its facilities and to sell natural gas to the industries [fol. 62] and municipalities located in said district, and because of the location of its pipeline, which crosses the state of Illinois from a point south of Rock Island, Illinois, to Joliet, Illinois, the position it occupies in the natural gas industry, and its experience in the transmission of natural gas under high pressure for long distances, it is peculiarly equipped to bring natural gas into this market. In order for Natural Gas Pipeline Company of America to bring natural gas to other parts of northern Illinois and Indiana and southern Wisconsin, it will be necessary for the company to enlarge and improve its facilities, construct additional pipelines and pumping stations and to make certain improvements and betterments in its present system, all of which will require large sums of money not now owned, possessed or controlled by the company. Natural Gas Pipeline Company of America has proposed and has and is considering the sale of bonds and other securities to obtain the necessary funds for the enlargement and extension of its facilities to bring natural gas to said market, but if the company is required to submit to the jurisdiction of the Illinois Commerce Commission, or to the said Interlocutory Order dated March 3, 1937, the company will be unable to sell its proposed securities or to borrow money for the purpose of bringing gas to said market, and its credit will be impaired and its business restricted and hampered, and the company will be prevented from entering [fol. 63] said potential market and will suffer damage in a large and undeterminable sum greatly in excess of $3,000.00.

Further affiant saith not.

S. E. Campbell.

Subscribed and sworn to before me on the 6th day of April, 1937. Esther M. Wilson, Notary Public. My commission expires on the 28th day of May, 1939. (Seal.)

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW SUGGESTED AND REQUESTED BY THE PLAINTIFF—Filed June 17, 1937

Now comes Natural Gas Pipeline Company of America, the plaintiff in the above entitled cause, and, after hearing by the Court of its application for a preliminary or interlocutory injunction, requests the Court to find specially the following facts shown by the evidence adduced at said hearing:

1. On the 11th day of March, 1937, the plaintiff herein filed in this court a complaint in equity praying that a writ of injunction issue to restrain the persons constituting the Illinois Commerce Commission and Otto Kerner, Attorney General of the State of Illinois, from enforcing an order of the said Commission.

2. This cause was assigned for hearing to the Honorable William H. Holly, one of the judges of this court, and in accordance with the provisions of Section 266 of the Judicial Code of the United States of America the said judge did [fol. 65] call to hear plaintiff's application for an interlocutory injunction with him the Honorable Will M. Sparks, Circuit Judge of the Seventh Circuit, and the Honorable John P. Barnes, another of the judges of this Court.

3. On the 8th day of April, 1937, the said three judges heard the arguments of counsel for the respective parties

on said application for an interlocutory injunction, and thereafter said counsel filed memoranda of authorities in support of their respective contentions.

4. The defendants agreed not to enforce the order of the Illinois Commerce Commission dated March 3, 1937, pending the decision of the Court on the application for an interlocutory injunction.

5. The court has jurisdiction of the subject matter of and the parties to this proceeding.

6. The plaintiff, Natural Gas Pipeline Company of America, is a corporation organized under and existing by virtue of the laws of the State of Delaware and that it has offices at 19-20 Dover Green, Dover, Delaware, and at 20 North Wacker Drive, Chicago, Illinois.

7. The defendants, James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane and Harry A. Barr are the persons presently constituting the Illinois Commerce Commission, which is an administrative body created by and acting under and pursuant to an act of the General Assembly of the State of Illinois entitled "An Act Concerning Public Utilities", approved June 29, 1921, and in force July 1, 1921, commonly referred to as the "Public Utilities Act" and that the defendant, Otto Kerner, is the Attorney General of the State of Illinois, the legal counsel for the [fol. 66] Illinois Commerce Commission, and that he is charged with the duty of commencing and conducting suits and proceedings to enforce the orders of the Commission and the provisions of the Public Utilities Act, and to recover and enforce the fines and penalties imposed by the Public Utilities Act for its violation or the violation or non-obedience of the orders of the Illinois Commerce Commission, and that each of said defendants is a resident and citizen of the State of Illinois.

8. This is a suit of a civil nature arising under the Constitution of the United States of America between citizens of different states within the equity jurisdiction of the District Court of the United States and that the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000.00).

9. Plaintiff is engaged in the sale, transportation and delivery of natural gas from a point or points in the State of

Oklahoma to distributors and consumers of natural gas in the states of Kansas, Nebraska, Iowa and Illinois.

10. Said natural gas is transported from said point or points in the State of Oklahoma to said consumers or distributors of natural gas in the States of Kansas, Nebraska, Iowa and Illinois by means of a system of pipe lines and pumping stations.

11. Plaintiff's business and commerce is wholly interstate and national in character, and plaintiff is not engaged in intrastate commerce within the State of Illinois.

12. Plaintiff is not qualified to do an intrastate business within the State of Illinois under the terms and provisions of the laws of the State of Illinois, and is not a public utility nor subject to the jurisdiction or control of the Illinois Com- [fol. 67] merce Commission under the Illinois Public Utilities Act, and has not been the recipient of any rights and/or privileges by force of any statute, franchise or ordinance of the State of Illinois or of any governmental subdivision thereof.

13. On or about the 25th day of July, 1931, the plaintiff, then known as the Continental Construction Corporation, and Chicago District Pipeline Company, an Illinois corporation, made and executed a certain agreement in writing for the sale of natural gas to the said Chicago District Pipeline Company, a copy of which is attached to plaintiff's bill of complaint as Exhibit A. On or about the 31st day of December, 1935, the plaintiff and the said Chicago District Pipeline Company made and executed a certain agreement of forbearance, a copy of which is attached to plaintiff's bill of complaint as Exhibit B.

14. On or about the 17th day of November, 1936, the Illinois Commerce Commission issued a citation against the Chicago District Pipeline Company, an Illinois corporation, a copy of which is attached to plaintiff's bill of complaint as Exhibit C, requiring the said company to appear before it and show cause, if any there might be, why the rates charged by said company for gas sold to operating companies should not be reduced.

15. Thereafter, hearings were instituted by said Illinois Commerce Commission on said citation, and on the 3rd day

of March, 1937, and after the Chicago District Pipeline Company had closed its evidence, completed its proof and rested its case, the Illinois Commerce Commission entered another order, directed to and served upon Natural Gas Pipeline [fol. 68] Company of America, directing it to file with the Illinois Commerce Commission, on or before the 15th day of March, A. D. 1937, a true and accurate report as to the cost of the property of said Natural Gas Pipeline Company of America which is used in supplying natural gas to said Chicago District Pipeline Company and a statement of the income and expenses in connection with supplying gas to said Chicago District Pipeline Company, or to report to the Commission in substitution thereof a true and accurate statement as to the cost of all of its property or properties used by it in the business of transporting and selling natural gas, together with a statement as to the income and expenses of such operations, and further ordering that the said Natural Gas Pipeline Company of America make available for the examination of the Commission, or such of its officers, agents or employees as it might designate, all of said Natural Gas Pipeline Company of America's accounts and records relating to transactions between the said company and the said Chicago District Pipeline Company, including all accounts and records as to joint or several expenses, any portion of which might be applicable to said transactions, and that this is the order which the plaintiff now seeks to restrain.

16. The Natural Gas Pipeline Company of America is not a party to said citation or to said proceedings against the Chicago District Pipeline Company, and said order of March 3, 1937 was made and entered by said Illinois Commerce Commission without notice to the plaintiff and without giving the plaintiff an opportunity to be heard prior to the entry thereof.

17. Prior to September 1, 1931, all or substantially all of the outstanding capital stock of Chicago District Pipeline Company was owned or held by Insull, Son & Co., Inc., [fol. 69] an Illinois corporation, and, since September 1, 1931, by Natural Gas Investment Company, an Illinois Corporation.

18. The outstanding capital stock of Natural Gas Pipeline Company of America, at the times hereinafter men-

tioned, was and is held by the following named corporations, substantially in the amounts indicated, namely:

	Distribution on July 25, 1931	Distribution on December 31, 1935	Present Distribution
Insull, Son & Co., Inc., an Illinois corporation	26.63%	0.00%	0.00%
Cities Service Company, a Delaware corporation	26.63%	26.63%	26.63%
Natural Gas Investment Company, an Illinois corporation	0.00%	26.63%	26.63%
The Texas Corporation, a Delaware corporation	17.58%	17.58%	17.58%
Standard Oil Company, a New Jersey corporation	26.62%	13.31%	13.31%
Southwestern Development Company, a Colorado corporation	0.00%	13.31%	13.31%
Columbian Carbon Company, a Delaware corporation	2.53%	2.53%	2.53%

19. On July 25, 1931, all of the outstanding capital stock of Insull, Son & Co., Inc., was owned by Insull Utility Investments, Inc., an Illinois corporation, which was not owned or controlled directly or indirectly by any one or more of the corporations listed in the above finding.

20. The stock of Natural Gas Investment Company is held by the following named corporations, substantially in the amounts indicated:

Peoples Gas Subsidiary Corporation, an Illinois corporation	79.54%
[fol. 70] Commonwealth Subsidiary Corporation, an Illinois corporation	4.28%
Public Service Co. of Northern Illinois, an Illinois corporation	16.18%

21. All of the outstanding capital stock of the Peoples Gas Subsidiary Corporation, an Illinois corporation, is owned by The Peoples Gas Light and Coke Company, an Illinois corporation, and all of the outstanding capital stock of the Commonwealth Subsidiary Corporation, an Illinois corporation, is owned by Commonwealth Edison Company, an Illinois corporation.

22. At the time of the negotiation for and execution of the contract of July 25, 1931, and the agreement of forebearance, referred to above, the board of directors of the plaintiff corporation consisted of eight members; said board has subsequently been enlarged to include nine members; Natural Gas Investment Company and Insull, Son & Co., Inc., have been represented by not more than two members of said board.

23. On July 8, 1933 there was added to the Public Utilities Act, referred to above, by amendment, Section 8a, which provides in part as follows:

"(2) The Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with public utilities under the jurisdiction of the Commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the Commission may prescribe. For the purpose of this section, the phrase 'affiliated interests' means:

* * * * * * *

"(c) Every corporation, ten per centum or more of whose voting capital stock is owned by any person or corporation owning ten per centum or more of the voting capital [fol. 71] stock of such public utility, or by any person or corporation in any such chain of successive ownership of ten per centum or more of voting capital stock;

* * * * * * *

"(f) Every corporation which has one or more elective officers or one or more directors in common with such public utility;"

24. It is upon this Section of the Public Utilities Act that the defendants rely as authority for the order of the Illinois Commerce Commission of March 3, 1937

25. The affairs of the plaintiff and of Chicago District Pipeline Company are controlled by their respective boards of directors and officers, acting pursuant to their charters and the laws of the states of their incorporation.

26. Neither Natural Gas Investment Company, Insull, Son & Co., Inc. nor any of the other corporations named above, have ever controlled or attempted to control the board of directors of Natural Gas Pipeline Company of America.

27. The defendants threaten to and intend to regulate, supervise and control the contracts, rates and other affairs of the plaintiff, and otherwise exercise jurisdiction and control over the plaintiff, and to inquire into the earnings, expenses and profits of the plaintiff, the value of its properties and investments, and the other business affairs of the plaintiff; that it is the avowed intention of said Illinois Commerce Commission to treat the Chicago District Pipeline Company and Natural Gas Pipeline Company of America as affiliated corporations with common stock ownership, and subject to common control, to regulate the business affairs of said corporations as a single enterprise under the jurisdiction of said Illinois Commerce Commission, to take [fol. 72] jurisdiction of and regulate the profits and income of the plaintiff, and to exercise all power, control and dominion over the plaintiff, which purports to have been granted to said Illinois Commerce Commission by Section 8a of said Public Utilities Act referred to in said order.

28. If the defendants are permitted to enforce the order of the Illinois Commerce Commission, dated March 3, 1937, plaintiff will suffer great inconvenience and expense, plaintiff's trade secrets, secret processes and methods of doing business will be exposed to its competitors, plaintiff's credit will be impaired, and plaintiff will be hampered and hindered in its interstate commerce and business affairs, and will suffer great and irreparable harm and injury.

29. The penalties provided by said Public Utilities Act for violation of or non-obedience of the orders of the Illinois Commerce Commission are so large and so severe as

to intimidate the plaintiff, its officers and agents, and to render it impracticable for the plaintiff to risk the imposition of said penalties or to resist the order of the Illinois Commerce Commission except in this Court.

30. Unless the Illinois Commerce Commission and the said Otto Kerner are restrained and enjoined, they will proceed with the proposed and threatened inquiry and investigation of the plaintiff's affairs and will compel the plaintiff, its officers, agents and employees to comply with said order of the said Illinois Commerce Commission, and enforce the penalties prescribed by the laws of the State of Illinois for violation of or non-obedience to said order, and plaintiff, its officers, agents and employees will be coerced by the threat of said penalties into compliance with [fol. 73] said order, to the great inconvenience, expense and irreparable loss and damage of the plaintiff.

31. The plaintiff states its willingness and intention and offers to do equity in the premises.

32. The Court has not passed upon or considered the validity or invalidity, or the constitutionality or unconstitutionality, of Section 8a of the Public Utilities Act of the State of Illinois, referred to above, in reaching its decision on plaintiff's application for an interlocutory injunction, nor upon the right of the defendants to require the plaintiff to comply with the order of the Commission dated March 3, 1937 under said Section 8a, and the decision of the Court in this case is not based upon that section of the Illinois Public Utilities Act.

Plaintiff also requests the Court to make the following conclusions of law, as provided by Federal Equity Rule 70½:

(a) Section 8a of the statute of the State of Illinois, commonly known as "An Act Concerning Public Utilities", approved June 29, 1921, in force July 1, 1921, as amended (Chapter 111-A, Illinois Bar Statutes, 1935, Section 23 (1)), as applied by the defendants to the plaintiff herein, is in contravention of the Constitution of the United States, especially of Article 1, Section 8, Paragraph Third, and of the Fourteenth Amendment.

(b) The order of the Illinois Commerce Commission, dated March 3, 1937, entered pursuant to the supposed authority granted by said Act and complained of in plaintiff's bill of complaint, is in contravention of the Constitution of the United States, especially of Article 1, Section 8, Para-[fol. 74] graph Third, and of the Fourteenth Amendment.

(c) Section 8a of the statutes of the State of Illinois, commonly known as "An Act Concerning Public Utilities", approved June 29, 1921, in force July 1, 1921, as amended (Chapter 111-A Illinois Bar Statutes 1935, Section 23(1)), as applied by the defendants to the plaintiff herein, is in contravention of the Constitution of the State of Illinois, especially of Section 6 of Article II.

(d) The order of the Illinois Commerce Commission dated March 3, 1937, entered pursuant to the supposed authority granted by said Act, and complained of in plaintiff's bill of complaint, is in contravention of the Constitution of the State of Illinois, especially of Section 6 of Article II.

(e) The order of the Illinois Commerce Commission dated March 3, 1937 is not authorized by and is in contravention of Section 8a of the statute of the State of Illinois known as "An Act Concerning Public Utilities", approved by the Illinois State Legislature on June 29, 1921, in force July 1, 1921, as amended (Chapter 111-A Illinois Bar Statutes 1935, Section 23(1)).

(f) The order of the Illinois Commerce Commission dated March 3, 1937 and complained of in complainant's bill of complaint exceeds the jurisdiction and lawful power and authority of the Illinois Commerce Commission and is wholly null and void.

(g) The defendants are not authorized nor empowered to inquire into, investigate or require the disclosure of the earnings, expenses or profits of the plaintiff, nor the value of its properties or investments, nor any other business or affair of the plaintiff.

[fol. 75] (h) The defendants are not authorized nor empowered nor have they authority or jurisdiction to regulate, control, supervise or interfere with the contracts or other business affairs of the plaintiff.

(i) The Public Utilities Act, and particularly Section 8a thereof, has no application to the plaintiff company and that said Act is wholly null and void insofar as said Act or said Section 8a thereof purports to confer upon the Commission any jurisdiction or authority over the plaintiff, its officers or agents, or the plaintiff's business, books, records, contracts or affairs.

(j) Plaintiff will be deprived of its property and civil rights without due process of law, and denied the equal protection of the laws, and its papers and effects will be subject to unreasonable search and seizure, and plaintiff's interstate commerce will be unlawfully burdened, obstructed and hampered if the defendants are permitted to enforce the order of the Illinois Commerce Commission dated March 3, 1937.

(k) The plaintiff has no adequate and complete remedy at law, and only in a suit in equity and by the final decree and order of injunction of this Court can the plaintiff be protected in its property and constitutional rights.

Respectfully submitted, Sidley, McPherson, Austin & Burgess, Attorneys for Natural Gas Pipeline Company of America. J. J. Hedrick, Donald F. McPherson, Howard Neitzert, of Counsel for the Plaintiff.

[fol. 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM—Filed July 2, 1937

The court is of the opinion That the right of the Illinois Commerce Commission to the information which may be disclosed by an examination of the records of the plaintiff is not dependent upon the validity of the Illinois statute which seems to be particularly relied upon by counsel for the Illinois Commerce Commission. The Illinois Commerce Commission has a right to fix the rates to be charged by the Chicago District Pipeline Company, and, in order to do so, it has the power to determine what the operating costs of the Chicago District Pipeline Company should be. In order that the Commission may determine these costs, it has the right to get information wheresoever it may be found within its jurisdiction. If the records of the plaintiff contain such information, the Illinois Commerce Commission can compel the production of those records before it. It is true that a procedure by way of a subpoena duces tecum would be the more usual method, but there is no essential difference between the command of a subpoena duces tecum and the order of the Commission which is sought to be restrained. If the plaintiff preferred to produce its records only in response to a subpoena it might have pointed out this supposed defect of procedure to the Commission. Furthermore, if the order is somewhat broader than may be necessary, this, likewise, could have been pointed out to the Commission by way of motion. As far as this court can see, there is no reason for the intervention of this court by way of injunction.

William M. Sparks, Circuit Judge. John P. Barnes, District Judge. William H. Holly, District Judge.

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—July 2, 1937

The above entitled cause having come on to be heard on application of the plaintiff for an interlocutory injunction and the parties having appeared by their respective counsel, the court having heard arguments in support of their respective contentions and being duly advised in the premises now finds as findings of fact that:

1. On the 11th day of March, A. D. 1937, the plaintiff herein filed in this court a complaint in equity praying that a writ of injunction issue to restrain the persons constituting the Illinois Commerce Commission and Otto Kerner, Attorney General of the State of Illinois, from enforcing an order of the said Commission.

2. Said cause was assigned for hearing to the Honorable William H. Holly, one of the judges of this court, and in accordance with the provisions of Section 266 of the Judicial Code of the United States of America the said judge did call to hear this application for an interlocutory injunction with him the Honorable Will M. Sparks, Circuit Judge of the Seventh Circuit, and the Honorable John P. Barnes, another of the judges of this Court.

3. On the 8th day of April, A. D. 1937, the said three judges heard the arguments of counsel for the respective parties on the application for an interlocutory injunction, and thereafter said counsel filed memoranda of authorities in support of their respective contentions.

[fol. 78] 4. The defendants agreed not to enforce the order of the Illinois Commerce Commission dated March 3, 1937 pending the decision of the court on the application for an interlocutory injunction.

5. The court has jurisdiction of the subject matter of and the parties to this proceeding.

6. The plaintiff, Natural Gas Pipeline Company of America, is a corporation organized under and existing by virtue of the laws of the State of Delaware, and that it has offices at 19-20 Dover Green, Dover, Delaware, and at 20 North Wacker Drive, Chicago, Illinois.

7. The defendants, James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane and Harry A. Barr are the persons presently constituting the Illinois Commerce Commission, which is an administrative body created by and acting under and pursuant to an act of the General Assembly of the State of Illinois entitled "An Act concerning public utilities," approved June 29, 1921, and in force July 1, 1921, commonly referred to as the "Public Utilities Act" and that the defendant, Otto Kerner, is the Attorney General of the State of Illinois, the legal counsel for the Illinois Commerce Commission, and that he is charged with the duty of commencing and conducting suits and proceedings to enforce the orders of the Commission and the provisions of the Public Utilities Act, and to recover and enforce the fines and penalties imposed by the Public Utilities Act for its violation or the violation or non-obedience of the orders of the Illinois Commerce Commission, and that each of said defendants is a resident and citizen of the State of Illinois.

8. This is a suit of a civil nature arising under the Constitution of the United States of America between citizens of different states within the equity jurisdiction of the District Court of the United States and that the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000.00).

9. On or about the 17th day of November, A. D. 1936, the Illinois Commerce Commission issued a citation (at- [fol. 79] tached to bill of complaint herein as Exhibit C) against the Chicago District Pipeline Company, an Illinois corporation, requiring the said company to appear before it and show cause, if any there might be, why the rates charged by said company for gas sold to operating companies should not be reduced.

10. Thereafter, on March 3, 1937, in the same proceeding the said Illinois Commerce Commission entered another order (attached to bill of complaint herein as Exhibit D) directed to the Natural Gas Pipeline Company of America, plaintiff herein, requiring it to file with the Commission a true and accurate report as to the cost of the property of said Natural Gas Pipeline Company of America which is used in supplying natural gas to said Chicago District Pipeline Company and a statement of the income and expenses in connection with supplying gas to said Chicago District Pipeline Company, or to report to the Commission in substitution thereof a true and accurate statement as to the cost of all of its property or properties used by it in the business of transporting and selling natural gas, together with a statement as to the income and expenses of such operations, and further ordering that the said Natural Gas Pipeline Company of America make available for the examination of the Commission, or such of its officers, agents or employees as it might designate, all of said Natural Gas Pipeline Company of America's accounts and records relating to transactions between the said company and the said Chicago District Pipeline Company, including all accounts and records as to joint or several expenses, any portion of which might be applicable to said transactions, and that this order which the plaintiff now seeks to restrain was served upon plaintiff.

11. The plaintiff is engaged in the sale, transportation and delivery of natural gas from a point or points in the State of Oklahoma to distributors and consumers of natural gas in the States of Kansas, Nebraska, Iowa and Illinois, and that 85% of such natural gas is sold and delivered to distributors and consumers thereof in the State of Illinois.

12. Such natural gas is transported from said point or [fol. 80] points in the State of Oklahoma to said consumers

or distributors of natural gas in the States of Kansas, Nebraska, Iowa and Illinois by means of pipelines and pumping stations.

13. On or about the 25th day of July, A. D. 1931, the plaintiff, then known as the Continental Construction Corporation, and Chicago District Pipeline Company, an Illinois corporation, made and executed an agreement in writing for the sale of natural gas to the said Chicago District Pipeline Company and that said contract was modified on or about the 31st day of December, A. D. 1935, when the plaintiff and the Chicago District Pipeline Company made and executed a certain agreement of forbearance.

14. Chicago District Pipeline Company is engaged in the sale, transportation and delivery of natural gas within the State of Illinois, being solely engaged in intrastate commerce and is a public utility within the scope and meaning of the Public Utilities Act and subject to and under the jurisdiction of the Illinois Commerce Commission, pursuant to the terms and provisions of the said Public Utilities Act.

15. All of the stock of Chicago District Pipeline Company is owned by Natural Gas Investment Company, an Illinois corporation.

16. The stock of Natural Gas Investment Company is owned by these corporations in the following amounts:

Peoples Gas Subsidiary Corporation, an Illinois Corporation	79.54%
Commonwealth Subsidiary Corporation, an Illinois Corporation	4.28%
Public Service Company of Northern Illinois, an Illinois Corporation	16.18%

17. All of the outstanding capital stock of the Peoples Gas Subsidiary Corporation, an Illinois corporation, is owned by The Peoples Gas Light and Coke Company, an Illinois corporation, and that all of the outstanding capital stock of the Commonwealth Subsidiary Corporation, an Illinois corporation, is owned by Commonwealth Edison Company, an Illinois corporation.

18. The outstanding capital stock of the plaintiff is [fol. 81] held by the following named corporations substantially in the amounts indicated:

Natural Gas Investment Company, an Illinois corporation	26.63%
Cities Service Company, a Delaware corporation	26.63%
The Texas Corporation, a Delaware corporation	17.58%
Standard Oil Company, a New Jersey corporation	13.31%
Southwestern Development Company, a Colorado corporation	13.31%
Columbian Corporation Company, a Delaware corporation	2.53%

19. The board of directors of the plaintiff corporation consists of nine members, and that at all times since the incorporation of said plaintiff two of the members of said board have been members of the board of directors of either Natural Gas Investment Company, Insull, Son & Co., Inc., and The Peoples Gas Light and Coke Company.

20. Section 8a of the Public Utilities Act in part provides as follows:

"(2) The Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with public utilities under the jurisdiction of the commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the commission may prescribe. For the purpose of this section, the phrase 'affiliated interests' means:

* * * * * * *

(c) Every corporation, ten per centum or more of whose voting capital, stock is owned by any person or corporation owing ten per centum or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of ten per centum or more of voting capital stock;

* * * * * * *

(f) Every corporation which has one or more elective officers or one or more directors in common with such public utility."

[fol. 82] 21. The said Natural Gas Pipeline Company of America, plaintiff herein, is affiliated with the Chicago District Pipeline Company within the provisions of Section 8a of the Public Utilities Act.

22. No pipeline company other than plaintiff operates in or near the territory served by Chicago District Pipeline Company, and that plaintiff has no competition from other wholesalers of natural gas in the Chicago area.

23. The Illinois Commerce Commission has the power and is charged with the duty under the Public Utilities Act of fixing just and reasonable rates for the sale of natural gas at wholesale by Chicago District Pipeline Company.

24. In order to fix just and reasonable rates for the said Chicago District Pipeline Company the said Illinois Commerce Commission must inquire into the reasonableness of the operating charges of said Chicago District Pipeline Company and that in 1936 the operating expenses claimed to have been incurred by said Chicago District Pipeline Company amounted to $12,818,713.89, of which amount $12,362,288.15 was paid to the plaintiff for gas purchased from it under the terms of the contract hereinbefore referred to.

25. The Illinois Commerce Commission was fully authorized to enter the order of March 3, 1937, complained of herein.

26. The entry of the said order of March 3, 1937, by the said Illinois Commerce Commission did not deprive plaintiff herein of notice or an opportunity to be heard before said Commission.

27. In 1932 R. W. Gallagher, one of the officers of the plaintiff, testified as to the actual earnings and investment of said Natural Gas Pipeline Company, plaintiff herein, and estimates as to its future earnings before the said Illinois Commerce Commission in the proceedings involving the application of said Chicago District Pipeline Company for approval of its present rate schedule.

28. Said order of March 3, 1937, complied in all respects with the requirements of the Constitution of the United [fol. 83] States of America and the Constitution of the State of Illinois as to due process.

29. It is reasonably necessary that the Illinois Commerce Commission investigate the earnings of plaintiff with respect to gas sales to the said Chicago District Pipeline Company, in order that said Commission might determine the reasonableness of the operating expenses of said Chicago District Pipeline Company.

The Court further finds as conclusions of law:

1. Natural Gas Pipeline Company of America, plaintiff herein, is not entitled to an interlocutory injunction in this proceeding, since it has failed to show that it is being denied any constitutional right by virtue of the action of the said Illinois Commerce Commission of March 3, 1937, or that it is about to suffer irreparable injury or damage by reason of said action of said Commission.

2. The order of March 3, 1937, is valid and proper under the police power of the State of Illinois, since it is in the nature of a subpoena to compel the production of records for the purpose of enabling the Commission to determine the proper operating costs of a utility subject to its jurisdiction.

3. The order of March 3, 1937, being in the nature of a subpoena to compel the production of records for the purpose of enabling the Commission to determine the proper operating costs of a utility subject to its jurisdiction, does not violate Subsection 3 of Section 8 of Article I of the Constitution of the United States.

4. The order of the 3d day of March, A. D. 1937, does not violate the "Due Process" Clause of the Constitution, being Section 1 of the 14th Amendment to said Constitution, since the plaintiff is in possession of relevant information bearing upon the operating expenses of the Chicago District Pipeline Company, a utility subject to the jurisdiction of the Commission.

5. The order of the 3d day of March, A. D. 1937, does not constitute an unlawful search and seizure of plaintiff's property.

[fol. 84] 6. The said Illinois Commerce Commission, under the provisions of Section 8a of the said Public Utilities Act, has the power to investigate transactions between the said Natural Gas Pipeline Company of America, a corporation, plaintiff herein, and the said Chicago District Pipeline Company.

7. The order of the Illinois Commerce Commission dated March 3, 1937, was duly authorized by the Public Utilities Act, and especially Section 8a thereof.

8. The application of the plaintiff, Natural Gas Pipeline Company of America, a corporation, for an interlocutory injunction should be denied.

Chicago, Illinois, July 2, 1937.
Enter:

William M. Sparks, Judge of the United States Circuit Court of Appeals for the Seventh Circuit. John P. Barnes, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division. William H. Holly, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

[fol. 85-88] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING APPLICATION FOR INTERLOCUTORY INJUNCTION—July 2, 1937

The above entitled cause having come on to be heard on application of the plaintiff for an interlocutory injunction, and the parties having appeared by their respective counsel, and the court having heard arguments in support of their respective contentions and being duly advised in the premises;

It is Hereby Ordered, Adjudged and Decreed that the application of the plaintiff, Natural Gas Pipeline Company of America, a corporation, for an interlocutory injunction in this cause be, and the same is hereby, denied.

It is Further Ordered, Adjudged and Decreed that the effect of this order should be, and it is hereby, stayed for a period of not to exceed thirty (30) days from the date hereof, in order to provide said plaintiff, Natural Gas

Pipeline Company of America, an opportunity to perfect its appeal to the Supreme Court of the United States.

Chicago, Illinois, July 2nd, 1937.
Enter:

William M. Sparks, Judge of the United States Circuit Court of Appeals for the Seventh Circuit. John P. Barnes, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division. William H. Holly, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

[fol. 89] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 9, 1937

Now comes the said Natural Gas Pipeline Company of America, a corporation, plaintiff in the above entitled cause, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in said cause from the order of this Court, organized pursuant to the provisions of Section 266 of the Judicial Code, which order was entered on the 2nd day of July, 1937, denying the application of the plaintiff for a preliminary or interlocutory injunction:

1. The Court erred in denying plaintiff's application for an interlocutory or preliminary injunction.

2. The Court erred in refusing and failing to make each of the findings of fact and each of the conclusions of law suggested and requested by the plaintiff and not included in the Court's findings of fact and conclusions of law.

3. The Court erred in making each of its findings of fact and each of its conclusions of law which were not requested and suggested by the plaintiff.

4. The findings of fact and conclusions of law made by [fol. 90] the Court do not support the Court's order denying plaintiff's application for an interlocutory or preliminary restraining order.

5. The memorandum of the Court, signed by the Judges and filed on the 2nd day of July, A. D. 1937, does not support the order of the Court denying plaintiff's application for an interlocutory or preliminary restraining order.

6. The Court erred in failing and refusing to find that Section 8a of the statute of the State of Illinois, commonly known as "An Act Concerning Public Utilities", approved June 29, 1921, in force July 1, 1921, as amended (Chapter 111-A, Illinois Bar Statutes, 1935, Section 23(1)), as applied by the defendants to the plaintiff herein, is in contravention of the Constitution of the United States, especially of Article 1, Section 8, Paragraph Third, and of the Fourteenth Amendment.

7. The Court erred in failing and neglecting to find that the order of the Illinois Commerce Commission, dated March 3, 1937, entered pursuant to the supposed authority granted by said Act and complained of in plaintiff's bill of complaint, is in contravention of the Constitution of the United States, especially of Article 1, Section 8, Paragraph Third, and of the Fourteenth Amendment.

8. The Court erred in failing and neglecting to find that Section 8a of the statute of the State of Illinois, commonly known as "An Act Concerning Public Utilities", approved June 29, 1921, in force July 1, 1921, as amended (Chapter 111-A Illinois Bar Statutes 1935, Section 23(1)), as applied by the defendants to the plaintiff herein, is in contravention of the Constitution of the State of Illinois, especially of Section 6 of Article II.

[fol. 91] 9. The Court erred in failing and neglecting to find that the order of the Illinois Commerce Commission dated March 3, 1937, entered pursuant to the supposed authority granted by said Act, and complained of in plaintiff's bill of complaint, is in contravention of the Constitution of the State of Illinois, especially of Section 6 of Article II.

10. The Court erred in failing and neglecting to find that the order of the Illinois Commerce Commission dated March 3, 1937 is not authorized by and is in contravention of Section 8a of the statute of the State of Illinois known as "An Act Concerning Public Utilities", approved by the Illinois State Legislature on June 29, 1921, in force July 1, 1921,

as amended (Chapter 111-A Illinois Bar Statutes 1935, Section 23(1)).

11. The Court erred in failing and neglecting to find that the order of the Illinois Commerce Commission dated March 3, 1937 and complained of in complainant's bill of complaint exceeds the jurisdiction and lawful power and authority of the Illinois Commerce Commission and is wholly null and void.

12. The Court erred in failing and neglecting to find that the defendants are not authorized nor empowered to inquire into, investigate or require the disclosure of the earnings, expenses or profits of the plaintiff, nor the value of its properties or investments, nor any other business or affair of the plaintiff.

13. The Court erred in failing and neglecting to find that the defendants are not authorized nor empowered nor have they authority or jurisdiction to regulate, control, supervise or interfere with the contracts or other business affairs of the plaintiff.

14. The Court erred in failing and neglecting to find [fol. 92] that the Public Utilities Act, and particularly Section 8a thereof, has no application to the plaintiff company and that said Act is wholly null and void insofar as said Act or said Section 8a thereof purports to confer upon the Commission any jurisdiction or authority over the plaintiff, its offices or agents, or the plaintiff's business, books, records, contracts or affairs.

15. The Court erred in failing and neglecting to find that plaintiff will be deprived of its property and civil rights without due process of law, and denied the equal protection of the laws, and its papers and effects will be subject to unreasonable search and seizure, and plaintiff's interstate commerce will be unlawfully burdened, obstructed and hampered if the defendants are permitted to enforce the order of the Illinois Commerce Commission dated March 3, 1937.

16. The Court erred in failing and neglecting to find that the plaintiff has no adequate and complete remedy at law, and only in a suit in equity and by the final decree and order of injunction of this Court can the plaintiff be protected in its property and constitutional rights.

17. The Court erred in finding that the right of the Illinois Commerce Commission to the information which may be disclosed by an examination of the records of the plaintiff is not dependent upon the validity of the Illinois statute relied upon by counsel for the Illinois Commerce Commission.

18. The Court erred in finding that in determining the operating costs of the Chicago District Pipeline Company, the Illinois Commerce Commission has the right to get information wheresoever it may be found within its jurisdiction.

19. The Court erred in holding that if the records of the [fol. 93] plaintiff contain such information, the Illinois Commerce Commission can compel the production of those records before it.

20. The Court erred in finding that there is no essential difference between the command of a subpœna duces tecum and the order of the Commission which is sought to be restrained.

21. The Court erred in holding that if the plaintiff preferred to produce its records only in response to a subpœna, it might have pointed out this supposed defect of procedure to the Illinois Commerce Commission.

22. The Court erred in holding that if the order of the Illinois Commerce Commission complained of in the bill of complaint is broader than may be necessary, this likewise could have been pointed out to the Commission by way of motion.

23. The Court erred in finding no reason for intervention by way of injunction as prayed in the bill of complaint.

24. The Court erred in holding, in effect, that the plaintiff must first make objection to the order of March 3, 1937 before the Illinois Commerce Commission, before resorting to the Federal Court in equity.

25. The Court erred in finding that the contract between the Continental Construction Corporation and the Chicago District Pipeline Company was modified on or about the 31st day of December, A. D. 1935 when the plaintiff and the Chicago District Pipeline Company made and executed a certain agreement of forbearance.

26. The Court erred in finding that no pipeline company other than plaintiff operates in or near the territory served [fol. 94] by Chicago District Pipeline Company, and that plaintiff has no competition from other wholesalers of natural gas in the Chicago area.

27. The Court erred in finding that in order to fix just and reasonable rates for the said Chicago District Pipeline Company the said Illinois Commerce Commission must inquire into the reasonableness of the operating charges of said Chicago District Pipeline Company and that in 1936 the operating expenses claimed to have been incurred by said Chicago District Pipeline Company amounted to $12,818,713.89, of which amount $12,362,288.15 was paid to the plaintiff for gas purchased from it under the terms of the contract hereinbefore referred to.

28. The Court erred in finding that the Illinois Commerce Commission was fully authorized to enter the order of March 3, 1937, complained of herein.

29. The Court erred in finding that the entry of the said order of March 3, 1937, by the said Illinois Commerce Commission did not deprive plaintiff herein of notice or an opportunity to be heard before said Commission.

30. The Court erred in finding that said order of March 3, 1937 complied in all respects with the requirements of the Constitution of the United States of America and the Constitution of the State of Illinois as to due process.

31. The Court erred in finding that it is reasonably necessary that the Illinois Commerce Commission investigate the earnings of plaintiff with respect to gas sales to the said Chicago District Pipeline Company in order that said Commission might determine the reasonableness of the operat- [fol. 95] ing expenses of said Chicago District Pipeline Company.

32. The Court erred in finding that Natural Gas Pipeline Company of America, plaintiff herein, is not entitled to an interlocutory injunction in this proceeding, since it has failed to show that it is being denied any constitutional right by virtue of the action of the said Illinois Commerce Commission of March 3, 1937, or that it is about to suffer irreparable injury or damage by reason of said action of said Commission.

33. The Court erred in finding that the order of March 3, 1937 is valid and proper under the police power of the State of Illinois, since it is in the nature of a subpœna to compel the production of records for the purpose of enabling the Commission to determine the proper operating costs of a utility subject to its jurisdiction.

34. The Court erred in finding that the order of March 3, 1937, being in the nature of a subpœna to compel the production of records for the purpose of enabling the Commission to determine the proper operating costs of a utility subject to its jurisdiction, does not violate Subsection 3 of Section 8 of Article I of the Constitution of the United States.

35. The Court erred in finding that the order of the 3rd day of March, A. D. 1937, does not violate the "Due Process" Clause of the Constitution, being Section 1 of the 14th Amendment to said Constitution, since the plaintiff is in possession of relevant information bearing upon the operating expenses of the Chicago District Pipeline Company, a utility subject to the jurisdiction of the Commission.

[fol. 96] 36. The Court erred in finding that the order of the 3rd day of March, A. D. 1937 does not constitute an unlawful search and seizure of plaintiff's property.

37. The Court erred in finding that the application of the plaintiff, Natural Gas Pipeline Company of America, a corporation, for an interlocutory injunction should be denied.

38. The Court erred in failing and neglecting to find that plaintiff's business and commerce is wholly interstate and national in character, and that plaintiff is not engaged in intrastate commerce within the State of Illinois.

39. The Court erred in failing and refusing to find that the order of the Illinois Commerce Commission, dated March 3, 1937 and complained of in plaintiff's bill of complaint, was entered after the Chicago District Pipeline Company had closed its evidence, completed its proof and rested its case in the proceedings instituted by the citation of the Illinois Commerce Commission, copy of which is attached to plaintiff's bill of complaint as Exhibit C.

40. The Court erred in refusing and neglecting to find that plaintiff is not qualified to do an intrastate business

within the State of Illinois under the terms and provisions of the laws of the State of Illinois, and is not a public utility nor subject to the jurisdiction or control of the Illinois Commerce Commission under the Illinois Public Utilities Act, and has not been the recipient of any rights and/or privileges by force of any statute, franchise or ordinance of the State of Illinois or of any governmental subdivision thereof.

41. The Court erred in refusing and neglecting to find [fol. 97] that the Natural Gas Pipeline Company of America is not a party to said citation or to said proceedings against the Chicago District Pipeline Company, and said order of March 3, 1937 was made and entered by said Illinois Commerce Commission without notice to the plaintiff and without giving the plaintiff an opportunity to be heard prior to the entry thereof.

42. The Court erred in refusing and neglecting to find that at the time of the negotiation for and execution of the contract of July 25, 1931, and the agreement of forbearance, referred to above, the board of directors of the plaintiff corporation consisted of eight members; said board has subsequently been enlarged to include nine members; Natural Gas Investment Company and Insull, Son & Co., Inc., have been represented by not more than two members of said board.

43. The Court erred in refusing and neglecting to find that it is upon Section 8a of the Public Utilities Act that the defendants rely as authority for the order of the Illinois Commerce Commission of March 3, 1937.

44. The Court erred in refusing and neglecting to find that the affairs of the plaintiff and of Chicago District Pipeline Company are controlled by their respective boards of directors and officers, acting pursuant to their charters and the laws of the states of their incorporation.

45. The Court erred in refusing and neglecting to find that neither Natural Gas Investment Company, Insull, Son & Co., Inc., nor any of the other corporations named in paragraphs 19 to 21, inclusive, of findings of fact and conclusions of law suggested and requested by the plaintiff, have ever controlled or attempted to control the board of directors of Natural Gas Pipeline Company of America.

[fol. 98] 46. The Court erred in refusing and neglecting to find that the defendants threaten to and intend to regulate, supervise and control the contracts, rates and other affairs of the plaintiff, and otherwise exercise jurisdiction and control over the plaintiff, and to inquire into the earnings, expenses and profits of the plaintiff, the value of its properties and investments, and the other business affairs of the plaintiff; that it is the avowed intention of said Illinois Commerce Commission to treat the Chicago District Pipeline Company and Natural Gas Pipeline Company of America as affiliated corporations with common stock ownership, and subject to common control, to regulate the business affairs of said corporations as a single enterprise under the jurisdiction of said Illinois Commerce Commission, to take jurisdiction of and regulate the profits and income of the plaintiff, and to exercise all power, control and dominion over the plaintiff, which purports to have been granted to said Illinois Commerce Commission by Section 8a of said Public Utilities Act referred to in said order.

47. The Court erred in refusing and neglecting to find that if the defendants are permitted to enforce the order of the Illinois Commerce Commission, dated March 3, 1937, plaintiff will suffer great inconvenience and expense, plaintiff's trade secrets, secret processes and methods of doing business will be exposed to its competitors, plaintiff's credit will be impaired, and plaintiff will be hampered and hindered in its interstate commerce and business affairs, [fol. 99] and will suffer great and irreparable harm and injury.

48. The Court erred in refusing and neglecting to find that the penalties provided by said Public Utilities Act for violation of or non-obedience of the orders of the Illinois Commerce Commission are so large and so severe as to intimidate the plaintiff, its officers and agents, and to render it impracticable for the plaintiff to risk the imposition of said penalties or to resist the order of the Illinois Commerce Commission except in this Court.

49. The Court erred in refusing and neglecting to find that unless the Illinois Commerce Commission and the said Otto Kerner are restrained and enjoined, they will proceed with the proposed and threatened inquiry and investigation of the plaintiff's affairs and will compel the plaintiff,

its officers, agents and employees to comply with said order of the said Illinois Commerce Commission, and enforce the penalties prescribed by the laws of the State of Illinois for violation of or non-obedience to said order, and plaintiff, its officers, agents and employees will be coerced by the threat of said penalties into compliance with said order, to the great inconvenience, expense and irreparable loss and damage of the plaintiff.

50. The Court erred in finding that the said Illinois Commerce Commission, under the provisions of Section 8a of the said Public Utilities Act, has the power to investigate transactions between the said Natural Gas Pipeline Company of America, a corporation, plaintiff herein, and the said Chicago District Pipeline Company.

51. The Court erred in finding that the order of the Illinois Commerce Commission dated March 3, 1937 was duly authorized by the Public Utilities Act, and especially Sec-[fol. 100] tion 8a thereof.

52. The Court erred in finding that the said Natural Gas Pipeline Company of America, plaintiff herein, is affiliated with the Chicago District Pipeline Company within the provisions of Section 8a of the Public Utilities Act.

53. The Court erred in finding that in 1932 R. W. Gallagher, one of the officers of the plaintiff, testified as to the actual earnings and investment of said Natural Gas Pipeline Company, plaintiff herein, and estimates as to its future earnings before the said Illinois Commerce Commission in the proceedings involving the application of said Chicago District Pipeline Company for approval of its present rate schedule.

Wherefore, plaintiff prays that said order may be reversed and that plaintiff's application for a preliminary injunction may be granted and allowed, and for such other and further relief as to the Court may seem just and proper.

Natural Gas Pipeline Company of America, by J. J. Hedrick, Donald F. McPherson, Howard Neitzert, Its Attorneys. Sidley, McPherson, Austin & Burgess, Attorneys for the Plaintiff.

[fol. 101] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—July 9, 1937

This day comes the plaintiff, Natural Gas Pipeline Company of America, by its attorneys, and files herein and presents to this Court of three Judges, organized pursuant to the provisions of Section 266 of the Judicial Code of the United States, its petition praying for an allowance of an appeal in this cause to the Supreme Court of the United States, agreeable to the statutes and rules of the Court in such case made and provided, praying also that a transcript of record, proceedings, affidavits and other documents upon which the order of this Court denying plaintiff's application for a preliminary or interlocutory injunction was rendered, duly authenticated, may be transmitted to the Supreme Court of the United States.

Now, therefore, said petition for leave to appeal is hereby granted and said appeal is allowed to the Supreme Court of the United States.

And it is Further Ordered that a citation be issued as provided by law and that a transcript of the record, proceedings, affidavits and other documents upon which said order is based, duly authenticated, be transmitted to the Supreme Court of the United States as in such case is by law made and provided.

[fols. 102-113] It is Further Ordered that the bond on appeal be fixed at the sum of Two hundred and fifty Dollars.

Enter:

William M. Sparks, Circuit Judge. John P. Barnes, District Judge. William H. Holly, District Judge.

Chicago, Illinois, July 9th, 1937.

[fol. 114] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON BY THE APPELLANT AND OF THE PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF—Filed July 22, 1937

To the Honorable Judges of the Supreme Court of the United States:

The points relied upon by the appellant for a reversal of the Order of the Court of three judges denying appel-[fol. 115] lant's application for an interlocutory injunction are the following:

1. Section 8a of the statute of the State of Illinois commonly known as "An Act Concerning Public Utilities," approved June 29, 1921, in force July 1, 1921, as amended (Chapter 111-A Illinois Bar Statutes, 1935, Section 23(1)) as applied by the appellees to the appellant herein, is in contravention of the Constitution of the United States, especially of Article 1, Section 8, Paragraph Third, and of the Fourteenth Amendment.

2. The order of the Illinois Commerce Commission, dated March 3, 1937, entered pursuant to the supposed authority granted by said Act and complained of in appellant's bill of complaint, is in contravention of the Constitution of the United States, especially of Article 1, Section 8, Paragraph Third, and of the Fourteenth Amendment.

3. Section 8a of the statute of the State of Illinois, commonly known as "An Act Concerning Public Utilities," approved June 29, 1921, in force July 1, 1921, as amended, (Chapter 111-A Illinois Bar Statutes 1935, Section 23(1)) as applied by the appellees to the appellant herein, is in contravention of the Constitution of the State of Illinois, especially of Section 6 of Article II.

4. The order of the Illinois Commerce Commission dated March 3, 1937, entered pursuant to the supposed authority granted by said Act, and complained of in appellant's bill of complaint, is in contravention of the Constitution of the State of Illinois, especially of Section 6 of Article II.

5. The order of the Illinois Commerce Commission dated March 3, 1937 is not authorized by and is in contravention of Section 8a of the statute of the State of Illinois known as "An Act Concerning Public Utilities," approved by the

Illinois State Legislature on June 29, 1921, in force July 1, [fol. 116] 1921, as amended, (Chapter 111-A, Illinois Bar Statutes, 1935, Section 23 (1)).

6. The order of the Illinois Commerce Commission dated March 3, 1937 and complained of in appellant's bill of complaint exceeds the jurisdiction and lawful power and authority of the Illinois Commerce Commission and is wholly null and void.

7. The appellees are not authorized nor empowered to inquire into, investigate or require the disclosure of the earnings, expenses or profits of the plaintiff, nor the value of its properties or investments, nor any other business or affair of the appellant.

8. The appellees are not authorized nor empowered nor have they authority or jurisdiction to regulate, control, supervise or interfere with the contracts or other business affairs of the appellant.

9. The "Act Concerning Public Utilities", and particularly Section 8a thereof, has no application to the appellant company, and said Act is wholly null and void insofar as said Act or said Section 8a thereof purports to confer upon the Commission any jurisdiction or authority over the appellant, its officers or agents, or the appellant's business, books, records, contracts or affairs.

10. Appellant will be deprived of its property and civil rights without due process of law, and denied the equal protection of the laws, and its papers and effects will be subject to unreasonable search and seizure, appellant's interstate commerce will be unlawfully burdened, obstructed and hampered and its credit impaired if the appellees are permitted to enforce the order of the Illinois Commerce Commission dated March 3, 1937.

11. The fines and penalties provided by the laws of the State of Illinois for violation or non-obedience of orders of [fol. 117] the Illinois Commerce Commission are so large and so severe as to preclude the appellant from resisting said order of the Illinois Commerce Commission. These fines and penalties include criminal prosecution of the officers, attorneys, agents and employes of the appellant and the imposition upon appellant of a maximum fine of $2,000 a day for the period of non-compliance.

If the appellant does comply with the demands of the Illinois Commerce Commission as stated in said order, there is no further point or substance to the litigation. The damage to the appellant will be immediate, complete and irreparable upon compliance with the said order of the Commission. It follows, therefore, that unless the injunction here prayed is granted, appellant will have been deprived both of a trial on the merits in the Court below and of the right to a reveiw by this Court of the order denying the preliminary injunction.

12. The appellees threaten to and intend, unlawfully and without legal authority, to regulate, supervise and control the contracts, rates and other affairs of the appellant, and otherwise exercise jurisdiction and control over the appellant, and to inquire into the earnings, expenses and profits of the appellant, the value of its properties and investments, and the other business affairs of the appellant. It is the avowed intention of the appellees to treat the Chicago District Pipeline Company and Natural Gas Pipeline Company of America as affiliated corporations with common stock ownership, and subject to common control, to regulate the business affairs of said corporation as a single enterprise under the jurisdiction of the Illinois Commerce Commission, to take jurisdiction of and regulate the profits and income of the appellant, and to exercise all power, control and dominion over the appellant, which purports to have [fol. 118] been granted to said Illinois Commerce Commission by Section 8a of said "Act Concerning Public Utilities."

13. Appellant adopts, in addition to the above designated points, its Assignment of Errors as further points to be relied upon in this appeal.

The following parts of the record heretofore filed in this cause are necessary for the consideration of the above points relied upon by the appellant:

1. Bill of Complaint of Natural Gas Pipeline Company of America, filed March 11, 1937, and all exhibits attached thereto.

2. Application for preliminary injunction and for the organization of a three judge court as provided by Section 266 of the Judicial Code, filed by the appellant on March 19, 1937.

3. Order organizing a three judge court under Section 266 of the Judicial Code, signed by His Honor, Judge Holly, as of March 19, 1937.

4. The joint and several answers of James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane, and Harry A. Barr, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Otto Kerner, Attorney General of the State of Illinois, filed April 6, 1937.

5. Two affidavits of S. E. Campbell, filed by the appellant on April 10, 1937.

6. The affidavit of C. E. Holmes, filed on April 10, 1937.

7. Findings of fact and conclusions of law suggested and requested by the appellant, filed by the appellant on June 17, 1937.

8. Memorandum of the Court, signed by the three judges and filed on July 2, 1937.

[fol. 119] 9. Findings of fact and conclusions of law, signed by the three judges, dated July 2, 1937.

10. Order denying appellant's application for preliminary injunction, dated July 2, 1937.

Natural Gas Pipeline Company of America, by William P. Sidley, J. J. Hedrick, Donald F. McPherson, Howard Neitzert, Its Attorneys and Counsel.

Received a copy of the foregoing Statement, this 20th day of July, A. D. 1937.

Otto Kerner, Attorney General and Attorney for Appellees. James G. Skinner, M. S. Winning, Harry R. Booth, W. Robert Ming, Jr., Assistant Attorneys General and Attorneys for Appellees.

[fol. 120] [File endorsement omitted.]

Endorsed on cover: File No. 41,711. N. Illinois, D. C. U. S. Term No. 230. Natural Gas Pipeline Company of America, appellant, vs. James M. Slattery, Andrew Olson, Charles E. Byrne, et al, etc. Filed July 20, 1937. Term No. 230 O. T. 1937.

MOTION OF APPELLEES TO ADVANCE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

NATURAL GAS PIPELINE COMPANY OF AMERICA, a corporation,
Appellant,
vs.
JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, JAMES D. MARNANE and HARRY A. BARR, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, and OTTO KERNER, Attorney General of the State of Illinois,
Appellees.

Docket No. 230.

MOTION OF APPELLEES TO ADVANCE.

OTTO KERNER,
Attorney General, State of Illinois,
Attorney for Appellees.

JAMES G. SKINNER,
MONTGOMERY S. WINNING,
HARRY R. BOOTH,
W. ROBERT MING, Jr.,
Assistants Attorney General,
Of Counsel.

BARNARD & MILLER, Printers, Franklin 0562, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

NATURAL GAS PIPELINE COMPANY OF AMERICA, a corporation, Appellant, vs. **JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, JAMES D. MARNANE and HARRY A. BARR, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, and OTTO KERNER, Attorney General of the State of Illinois,** Appellees.	**Docket No. 230.**

MOTION OF APPELLEES TO ADVANCE.

Come now the Appellees in the above entitled cause and move that this case be advanced for hearing and in support of their motion make the following brief statement of the matters involved and the reasons relied upon for advancement:

This is a suit by a Delaware corporation engaged in the transportation and sale of natural gas from the Panhandle area in Texas to distributors and consumers in Illinois, Kansas, Nebraska and Iowa, (90% of the company's business consisting of sales to distributors in Illinois) by means of a system of pipe lines and pumping stations. Pursuant to the authority contained in Section 8A of "An Act Concerning Public Utilities", approved June 29, 1921, in force July 1, 1921, as amended, being one of the Acts of the General Assembly of the State of Illinois, the Illinois Commerce Commission on March 3, 1937, entered an interlocutory order in a proceeding involving an investigation of the rates and charges of Chicago District Pipeline Company, an Illinois public utility affiliated with Appellant and engaged in the sale of natural gas to distributors in the Chicago metropolitan area and operating wholly intrastate, directing the Appellant to submit a report to the said Illinois Commerce Commission as to the cost of Appellant's property used by it in transporting and selling natural gas to the said Chicago District Pipeline Company, and as to the operating expenses incurred and profits realized by Appellant from such business, and requiring said Appellant to make its books available for examination by officers and agents of the Commission.

The stock of Appellant is owned and held by six corporations in varying percentages with Natural Gas Investment Company owning 26.6% of that stock. Of the stock of Natural Gas Investment Company 79.54% is owned by the Peoples Gas Light & Coke Company, currently seeking to enjoin in the State courts of Illinois the enforcement of an order of the Illinois Commerce Commission of May 21, 1937, denying the application of said company for permission to increase its rates by approximately Three Million Dollars per year. The stock of Chicago District Pipeline Company, which supplies natural gas to the Peoples Gas Light & Coke Company, is entirely owned by Natural Gas Investment Company.

In addition Chicago District Pipeline Company, Natural Gas Investment Company and Appellant have two directors in common.

Immediately following the entry of the order by the Illinois Commerce Commission on March 3, 1937, the Appellant filed this suit in the District Court for the Northern District of Illinois, Eastern Division, seeking to enjoin the enforcement of said order on the ground that both the action of the Commission and Section 8A of the Public Utilities Act hereinbefore referred to, were in violation of the Constitution of the United States and of the State of Illinois. After full hearing the three judge court organized pursuant to Section 266 of the Judicial Code, entered complete findings of fact and conclusions of law and on July 2, 1937, entered an order denying the application of Appellant for an interlocutory injunction. However, a stay of 30 days was allowed by the trial court "in order to provide said plaintiff an opportunity to perfect its appeal to the Supreme Court of the United States."

Thereafter on July 28th Appellant appeared before his Honor Mr. Justice Owen J. Roberts, and moved the court for an order to preserve the *status quo* pending appeal. Appellees appeared in opposition to this motion and a hearing was had. On August 5, 1937, an order was entered by Mr. Justice Roberts enjoining the Appellees from enforcing the order of the Commission of March 3, 1937, pending disposition of this appeal.

The controversy is one of great public interest to the State of Illinois and to the people thereof inasmuch as the effective regulation of the rates and charges of the Chicago District Pipeline Company depends upon a determination of the reasonableness of the operating expenses of Chicago District Pipeline Company. During the year 1936 the total operating expenses of Chicago District Pipeline Company amounted to $12,818,713.89, of which amount the sum of $12,362,288.15 was paid to Appellant for gas purchased from it.

The price paid for gas by Chicago District Pipeline Company is determined pursuant to a contract entered into between Appellant and said Chicago District Pipeline Company dated July 25, 1931, as modified by an Agreement of Forebearance, dated December 31, 1935. There is no competing pipeline company in the Chicago area and the only means by which the Commission can determine the fairness and reasonableness of the operating expenses of said Chicago District Pipeline Company and the rates for which it sells natural gas to local distributing companies is to determine whether the profits which Appellant is currently realizing from sale of natural gas to the Chicago District Pipeline Company are excessive and unreasonable.

Although the statutory court gave full consideration to all of the matters involved herein and came to the conclusion that Appellant was not entitled to an interlocutory injunction, the order of this court of August 5, 1937, depriving Appellees of the power to enforce the order of March 3, 1937, amounts practically to an interlocutory injunction since the Commission is restrained from enforcing its order of March 3, 1937, until this appeal shall have been disposed of.

One of the arguments advanced by counsel for Appellant at the hearing before Mr. Justice Owen J. Roberts was that if the order prayed for by Appellant were to be entered the time which would elapse before the final disposition of the case by this court would be very short. Moreover, counsel for Appellant agreed at that time to cooperate with counsel for Appellees to expedite the hearing of this matter in this court. Counsel for Appellant, however, have declined to join in this motion.

Since the case involves the constitutionality of a Statute of Illinois we respectfully submit that the matter should be disposed of at the earliest convenience of the court in order that the State might proceed in an orderly fashion with the regulation of public utility companies operating within its boundaries. So long as the restraining order heretofore entered is in effect, the Illinois Commerce Commission is seriously hampered in its ability to regulate adequately the rates and charges of the Chicago District Pipeline Company, whose rates, currently being investigated by said Commission, are an important factor in determining the reasonableness of the charges of The Peoples Gas Light and Coke Company, whose rates are now the subject of litigation in the State Courts of Illinois.

WHEREFORE Appellees pray that this cause be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

OTTO KERNER,
Attorney for Appellees.

JAMES G. SKINNER,
MONTGOMERY S. WINNING,
HARRY R. BOOTH,
W. ROBERT MING, JR.,
Assistants Attorney General,
Of Counsel.